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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Thursday, April 17, 2008

FEDERAL RESERVE SYSTEM

12 CFR Part 218

[Regulation R; Docket No. R–1274]

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 247

[Release No. 34–56501A; File No. S7–22–06]

RIN 3235–AJ74

Definitions of Terms and Exemptions Relating to the ''Broker'' Exceptions for Banks

AGENCIES: Board of Governors of the Federal Reserve System (''Board'') and Securities and Exchange Commission (''SEC'' or ''Commission'') (collectively, the Agencies).

ACTION: Final rule; technical amendments.

SUMMARY: The Board and the Commission jointly are adopting technical amendments to Regulation R, which the Agencies jointly adopted in September 2007. Regulation R implements certain of the exceptions for banks from the definition of the term ''broker'' in section 3(a)(4) of the Securities Exchange Act of 1934 (''Exchange Act''), as amended by the Gramm-Leach-Bliley Act (''GLBA''). The technical amendments correct cross-references and other typographical errors in the regulation.

DATES: *Effective Date:* The technical amendments are effective April 17, 2008.

Compliance Date: As provided in 12 CFR 218.781 and 17 CFR 247.100 of Regulation R, banks are exempt from complying with Regulation R and the ''broker'' exceptions in section 3(a)(4)(B) of the Exchange Act until the first day of their first fiscal year that commences after September 30, 2008.

FOR FURTHER INFORMATION CONTACT:
Board: Andrea Tokheim, Counsel, (202) 452–2300, or Brian Knestout, Attorney, (202) 452–2249, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SEC: Linda Stamp Sundberg, Senior Special Counsel, at (202) 551–5550, Office of the Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

A. Overview of Technical Amendment

In September 2007, the Board and the SEC jointly adopted a single set of final rules called Regulation R that implement certain of the exceptions for banks from the definition of the term ''broker'' in section 3(a)(4) of the Exchange Act, as amended by the GLBA.[1] Regulation R defines terms used in these statutory exceptions and includes certain related exemptions. The Board and the SEC are jointly adopting these technical amendments to correct certain cross-references and typographical errors in the final rules.

In particular, paragraph (b) of Rule 701 is revised to add a colon at the end of the paragraph.[2] Paragraphs (a)(6) and (a)(7) of Rule 721 are redesignated as paragraphs (a)(5) and (a)(6) because there was no numbered paragraph (a)(5). Paragraph (c)(2) of Rule 721 is revised to correctly cross-reference paragraph (h)(2), rather than paragraph (g)(2). Paragraph (e)(3) of Rule 723 is revised to correctly refer to ''this paragraph (e)'', rather than ''this paragraph (d)''. For consistency, paragraphs (a)(1)(A) and (a)(1)(B) of Rule 741 are redesignated as paragraphs (a)(1)(i) and (a)(1)(ii). Finally, paragraph (b)(1)(i) of Rule 775 is revised to add a dash to the citation of 15 U.S.C. 80a–5(a)(1).

B. Administrative Procedure Act

The Agencies find, in accordance with sections 553(b) and (d) of the Administrative Procedure Act,[3] that good cause exists to make these amendments effective upon publication in the **Federal Register** without providing prior notice and an opportunity for comment. Specifically, the Agencies find that notice and comment and a delayed effective date are unnecessary because the amendments make only technical changes to Regulation R and there is no substantive change on which the public could provide meaningful comment.[4]

C. Paperwork Reduction Act

Finally, the technical amendments do not contain any new or additional collections of information as defined by the Paperwork Reduction Act of 1995, as amended.[5]

List of Subjects

12 CFR Part 218

Banks, Brokers, Securities.

17 CFR Part 247

Banks, Brokers, Securities.

Federal Reserve System

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 218 as set forth below:

PART 218—REGULATION R—EXCEPTIONS FOR BANKS FROM THE DEFINITION OF BROKER IN THE SECURITIES EXCHANGE ACT OF 1934 (REGULATION R)

■ 1. The Authority citation for part 218 continues to read as follows:

Authority: 15 U.S.C. 78c(a)(4)(F).

[1] *See* 72 FR 56514, Oct. 3, 2007, which added parts 12 CFR 218 and 17 CFR 247 to the Code of Federal Regulations.

[2] The final rules adopted by the Board and the SEC within their respective titles of the Code of Federal Regulations (12 CFR part 218 for the Board and 17 CFR part 247 for the SEC) are identically numbered from § __.100 to § __.781. For ease of reference, the single set of final rules adopted by each Agency are referred to in this release as Rule __, excluding title and part designations. A similar format was used to refer to the single set of rules issued by the Agencies.

[3] 5 U.S.C. 553(b)(3)(A) and (d)(3).

[4] For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking); 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term ''rule'' does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

[5] 44 U.S.C. 3501.

Securities and Exchange Commission

Authority and Issuance

■ For the reasons set forth in the preamble, the Commission amends 17 CFR part 247 as set forth below:

PART 247—REGULATION R—EXEMPTIONS AND DEFINITIONS RELATED TO THE EXCEPTIONS FOR BANKS FROM THE DEFINITION OF BROKER

■ 2. The authority citation for part 247 continues to read as follows:

Authority: 15 U.S.C. 78c, 78*o*, 78q, 78w, and 78mm.

Common Rules

The common rules adopted by the Board as Part 218 of Title 12, Chapter II of the Code of Federal Regulations and by the Commission as Part 247 of Title 17, Chapter II of the Code of Federal Regulations are amended as follows:

■ 3. Paragraph (b) of common rule § __.701 is revised to read as follows:

§ __.701 Exemption from the definition of ''broker'' for certain institutional referrals.

* * * * *

(b) *Required disclosures.* The disclosures provided to the high net worth customer or institutional customer pursuant to paragraphs (a)(2)(i) or (a)(3)(i) of this section shall clearly and conspicuously disclose:

* * * * *

■ 4. In common rule § __.721, paragraphs (a)(6) and (a)(7) are redesignated as paragraphs (a)(5) and (a)(6), respectively, and paragraph (c)(2) is revised to read as follows:

§ __.721 Defined terms relating to the trust and fiduciary activities exception from the definition of ''broker.''

* * * * *

(c) * * *

(2) *Advertisement.* For purposes of this section, the term *advertisement* has the same meaning as in § __.760(h)(2).

■ 5. Paragraph (e)(3) of common rule § __.723 is revised to read as follows:

§ __.723 Exemptions for special accounts, transferred accounts, foreign branches and a de minimis number of accounts.

* * * * *

(e) * * *

(3) The bank did not rely on this paragraph (e) with respect to such account during the immediately preceding year.

§ __.741 [Amended]

■ 6. In common rule § __.741, paragraphs (a)(1)(A) and (a)(1)(B) are redesignated as paragraphs (a)(1)(i) and (a)(1)(ii), respectively.

■ 7. In common rule § __.775, paragraph (b)(1)(i) is revised to read as follows:

§ __.775 Exemption from the definition of ''broker'' for banks effecting certain excepted or exempted transactions in investment company securities.

* * * * *

(b) * * *

(1) * * *

(i) Any security issued by an open-end company, as defined by section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1)), that is registered under that Act; and

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, April 11, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated: April 11, 2008.

Florence Harmon,

By the Securities and Exchange Commission, Deputy Secretary.

[FR Doc. E8–8270 Filed 4–16–08; 8:45 am]

BILLING CODE 6210–01–P; 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0334; Airspace Docket No. 08–ASO–11]

Removal of Class E Airspace; Hawesville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class E5 Airspace at Hancock Airfield Airport, Hawesville, KY, as there is no longer a Standard Instrument Approach Procedure (SIAP) for Hancock Airfield Airport requiring Class E5 airspace.

DATES: Effective 0901 UTC, July 31, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

The Hancock Airfield Airport has closed and a new airport, Lewisport-Hancock County, has been built in the area. As a result, the associated Standard Instrument Approach Procedures (SIAPs) were withdrawn and cancelled removing the Class E5 airspace requirement at Hancock Airfield. New SIAPs are being developed for the new Lewisport/Hancock County Airport, however, the procedures and associated airspace are not scheduled for publication until September of 2009. This rule will become effective on the date specified in the **DATES** section. Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of the Hancock County Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E designation listed in this document will be removed from publication subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E5 airspace at Hancock Airfield Airport, Hawesville, KY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is noncontroversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator.

Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at Hancock Airfield Airport, Hawesville, KY.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Hawesville, KY [Remove]

* * * * *

Issued in College Park, Georgia, on March 31, 2008.

Mark D. Ward,

Acting Manager, System Support Group, Eastern Service Center, Air Traffic Organization (ATO).

[FR Doc. E8–8061 Filed 4–16–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0161; Airspace Docket No. 07–ASO–25]

Establishment of Class E Airspace; New Albany, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** (73 FR 5434) that establishes a Class E airspace area to support Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (IAPs) that serve the New Albany-Union County Airport, New Albany, MS.

DATES: Effective 0901 UTC, April 10, 2008. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support, AJO2–E2B.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5581; fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on January 30, 2008 (73 FR 5434), Docket No. FAA–2007–0161; Airspace Docket No. 07–ASO–25. The FAA uses the direct final rulemaking procedure for a non controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 10, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, GA on April 2, 2008.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–8063 Filed 4–16–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR, Part 71

[Docket No. FAA–2007–29374; Airspace Docket No. 07–ASW–11]

Establishment of Class D Airspace; Sherman, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class D airspace at Sherman, Texas. Establishment of an Air Traffic Control Tower at Sherman/Denison, Grayson County Airport, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) aircraft operations at Sherman/Denison, Grayson County Airport, Sherman, Texas.

DATES: *Effective Date:* 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR, Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Mallett, Central Service Center, System Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 222–4949.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class D airspace at Sherman, TX (72 FR 71607). This action would improve the safety of IFR aircraft at Sherman/Denison, Grayson County Airport, Sherman, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9R signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR, Part 71.1. The Class D airspace

designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR), part 71, by establishing Class D airspace extending upward from the surface to and including 3,300 feet Mean Sea Level (MSL) within a 5-mile radius of Sherman/Denison, Grayson County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Sherman/Denison, Grayson County Airport, Sherman, TX.

List of Subjects in 14 CFR, Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR, part 71, as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR, part 71, continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR, part 71.1 of the Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW TX D Sherman, TX [New]

Sherman/Denison, Grayson County Airport, TX
(Lat. 33°42′51″ N., long. 96°40′25″ W.)

* * * * *

That airspace extending upward from the surface to and including 3,300 feet MSL within a 5.0-mile radius of Grayson County Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, Texas, on: April 4, 2008.

Walter Tweedy,

Acting Manager, System Support Group, ATO Central Service Center.

[FR Doc. E8–8055 Filed 4–16–08; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release 34–57526A; File No. S7–06–07]

RIN 3235–AJ80

Proposed Rule Changes of Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; Correction.

SUMMARY: The Securities and Exchange Commission (''Commission'') published in the **Federal Register** of March 27, 2008 (72 FR 16179), a document concerning proposed rule changes by Self-Regulatory Organizations submitted pursuant to Section 19(b)(7)(A) of the Securities Exchange Act of 1934.

DATES: *Effective Date:* April 28, 2008.

FOR FURTHER INFORMATION CONTACT: John Roeser, Assistant Director, at (202) 551–5630, Michou Nguyen, Special Counsel, at (202) 551–5634, or Sherry Moore, Paralegal, at (202) 551–5549, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: This document corrects the comment due date that was incorrectly stated in the sample 19(b)(7)(A) release published with the final rule.

In rule document E8–5998 beginning on page 16179 in the issue of Thursday, March 27, 2008, make the following correction:

On page 16196, in the third column, the phrase ''should be submitted on or before April 17, 2008.'' is corrected to read ''should be submitted on or before May 8, 2008.

Dated: April 14, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–8267 Filed 4–16–08; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 12, 113 and 163

[CBP Dec. 08–10; USCBP–2006–0108]

RIN 1505–AB73

Entry of Softwood Lumber Products From Canada

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, the interim rule amending title 19 of the Code of Federal Regulations (19 CFR) that was published in the **Federal Register** (71 FR 61399) on October 18, 2006 as Customs and Border Protection (CBP) Dec. 06–25. The interim rule amended the CBP regulations by prescribing the collection of certain entry summary information for purposes of monitoring and enforcing the Softwood Lumber Agreement (SLA 2006) between the Governments of Canada and the United States, entered into on September 12, 2006. In an effort to better enable CBP to accurately and timely fulfill its data collection and reporting obligations

under the SLA 2006, this document identifies an additional entry code option that designates softwood lumber products that are specifically identified as exempt from SLA 2006 export measures pursuant to Annex 1A of the Agreement, notwithstanding the fact that the exempt goods are classifiable in residual Harmonized Tariff Schedule of the United States provisions that are listed as covered by the SLA 2006. This document also amends the list of required entry records set forth in the Appendix to part 163 of title 19 of the Code of Federal Regulations (19 CFR part 163) to reflect the recordkeeping requirements prescribed in CBP Dec. 06–25. Lastly, this document conforms the bond provisions applicable to certain imports of Canadian softwood lumber to reflect the softwood lumber provisions set forth in § 12.140 of title 19 of the Code of Federal Regulations.

DATES: *Effective Date:* April 17, 2008.

FOR FURTHER INFORMATION CONTACT: Millie Gleason, Office of International Trade, Tel: (202) 863–6557.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2006, the Governments of the United States and Canada (the ''Parties'') signed a bilateral Softwood Lumber Agreement (''SLA 2006'') concerning trade in softwood lumber products.

On October 18, 2006, Customs and Border Protection (CBP) published in the **Federal Register** (71 FR 61399), as CBP Dec. 06–25, an interim rule amending § 12.140 of title 19 of the Code of Federal Regulations (19 CFR 12.140) to reflect the terms of the SLA 2006 by prescribing special entry requirements applicable to shipments of softwood lumber products from Canada. The interim amendments required importers to enter a letter code representing the softwood lumber product's Canadian Region of Origin in the data entry field entitled ''Country of Origin'' located on the CBP Form 7501. Importers were also required to enter a Canadian-issued 8-digit export permit number preceded by a letter code designating either: (1) The date of shipment; (2) a Canadian Region whose exports of softwood lumber products are exempt from the export measures contained in the SLA 2006; or (3) a company listed in Annex 10 of the SLA 2006 as exempt from the Agreement's export measures. Importers of softwood lumber products from the Maritimes were required to provide CBP with the original paper Certificate of Origin issued by the Maritime Lumber Bureau with the paper entry summary documentation. CBP Dec. 06–25 also amended, on an interim basis, the ''List of Records Required for the Entry of Merchandise'' set forth in the Appendix to part 163 of title 19 of the CFR (19 CFR part 163) to reflect the entry document requirements mandated by the SLA 2006.

Comments were solicited on the interim rule.

Discussion of Comments

Three comments were received in response to the solicitation of comments in CBP Dec. 06–25. One comment was retracted by the commenter. A description of the comments received, together with CBP's analyses, is set forth below.

Comment: One commenter offered support for the requirement set forth in CBP Dec. 06–25 that an original Certificate of Origin from the Maritime Lumber Bureau must accompany each entry of softwood lumber into the United States and requested that this requirement be retained in the final rule.

CBP Response: This entry requirement is retained in the final rule.

Comment: One commenter suggested that CBP adopt two additional data-input requirements for imports of Canadian softwood lumber products. The commenter recommended that CBP require importers to disclose the ''Export Price'' of the merchandise within the meaning of Article XXI.25 of the SLA 2006. As defined in the agreement, the Export Price is the taxable value for purposes of calculating SLA 2006 export fees that Canada is obligated to collect. The commenter also suggests that CBP require importers of all Canadian softwood lumber products to declare the merchandise's ''Date of Shipment'' within the meaning of Article XXI.16 of the SLA 2006. The commenter asserts that this date is important because, depending on volumes shipped during specific periods (as determined by Date of Shipment), shipments from the Maritimes, the Territories, or by companies listed as excluded from export measures in the SLA 2006, can be subject to export measures notwithstanding normally applicable exemptions. The commenter notes that, under the terms of the interim rule, CBP is collecting Date of Shipment data regarding imports of most Canadian softwood lumber, but not on lumber produced in the Maritime Provinces, the Territories, or by excluded Canadian lumber producers.

CBP Response: Pursuant to Article XV.B of the SLA 2006, the U.S. is obligated to provide Canada with the appraised value, as defined by CBP, for each entry of softwood lumber products filed during the preceding month. The U.S. does not collect export prices; exporters of softwood lumber to the U.S provide that data to Canada.

The commenter correctly notes that CBP collects Date of Shipment data for all imports of softwood lumber covered by the SLA 2006, except for entries of softwood lumber that claim an exemption from the Agreement's export measures. Although CBP does not require Date of Shipment data for imports claiming exemption from SLA 2006 export measures, CBP collects the export date for these imports and uses that date to assess the Date of Shipment and, consequently, whether an exempt status remains valid for a given month.

Other Comments: Additional comments were received after the close of the comment period proposing unilateral enforcement of the Softwood Lumber Agreement and the collection of additional information in order to determine if the correct amount of tax is actually collected by Canadian authorities.

CBP Response: Such proposals exceed the scope of CBP authority and the requirements of the Softwood Lumber Agreement and consequently are not adopted in this document.

Conclusion

After review of the comments and further consideration, CBP has decided to adopt as final the interim rule published in the **Federal Register** (71 FR 61399) on October 18, 2006, as CBP Dec. 06–25, with the additional modifications set forth below.

As noted above, CBP Dec. 06–25 identifies a series of letter codes that are to be used as prefixes for the export permit numbers entered on the CBP Form 7501. These codes designate either an exclusion from export measures based on a product's Region of Origin, or a company's exempt-status, or the date of shipment as defined in Article XXI.16 of the SLA 2006. These codes enable the United States to fulfill its information collection and exchange obligations under Article XV of the Agreement by being able to assess monthly volumes attributable to specific Regions and excluded companies. This document clarifies CBP Dec. 06–25 by providing importers with an additional entry code option, ''P88888888'', which is used to designate entries of softwood lumber products that are specifically identified as exempt from SLA 2006 export measures pursuant to Annex 1A of the Agreement, notwithstanding the fact that the exempt goods are classifiable in residual Harmonized

Tariff Schedule of the United States provisions that are otherwise listed as covered by the SLA 2006.

In addition, § 12.140(b) and (c) are amended to clarify that all entries of softwood lumber products must be submitted to CBP in an electronic format, except for entries of softwood lumber products whose region of origin is the Maritimes, which must be submitted to CBP in paper.

The ''List of Records Required for the Entry of Merchandise'' set forth in the Appendix to part 163 of title 19 of the CFR (19 CFR part 163) is also amended by this document to clarify that, in addition to the Certificate of Origin issued by Canada's Maritime Lumber Bureau, the Canadian-issued Export Permit is a required entry document as per the SLA 2006 and 19 CFR 12.140(d).

Lastly, this document conforms the bond provisions applicable to certain imports of Canadian softwood lumber, set forth in 19 CFR 113.62(k), to reflect the new organizational structure of the softwood lumber provisions set forth in 19 CFR 12.140. To that end, § 113.62(k) is amended by removing the reference to paragraph (a) within § 12.140, and the existing time period of 20 days within which a principal must establish to the satisfaction of CBP that the applicable export permit has been issued by the Government of Canada is changed to 10 days to reflect the fact that, pursuant to the SLA 2006, the export permit number must be submitted to CBP at the time of entry summary.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to 5 U.S.C. 553(a)(1), public notice and a delayed effective date are inapplicable to this regulation because it involves a foreign affairs function of the United States.

Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The collection of information referenced in this regulation, CBP Form 7501, has been previously reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under OMB-assigned control number 1651–0022.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 163

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendment to the Regulations

■ For the reasons stated above, parts 12, 113 and 163 of title 19 of the Code of Federal Regulations are amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

■ 2. Section 12.140 is revised to read as follows:

§ 12.140 Entry of softwood lumber products from Canada.

The requirements set forth in this section are applicable for as long as the Softwood Lumber Agreement (SLA 2006), entered into on September 12, 2006, by the Governments of the United States and Canada, remains in effect.

(a) *Definitions.* The following definitions apply for purposes of this section:

(1) *British Columbia Coast.* ''British Columbia Coast'' means the Coastal Forest Regions as defined by the existing *Forest Regions and Districts Regulation,* B.C. Reg. 123/2003.

(2) *British Columbia Interior.* ''British Columbia Interior'' means the Northern Interior Forest Region and the Southern Interior Forest Region as defined by the existing *Forest Regions and Districts Regulation,* B.C. Reg. 123/2003.

(3) *Date of shipment.* ''Date of shipment'' means, in the case of products exported by rail, the date when the railcar that contains the products is assembled to form part of a train for export; otherwise, the date when the products are loaded aboard a conveyance for export. If a shipment is transshipped through a Canadian reload center or other inventory location, the date of shipment is the date the merchandise leaves the reload center or other inventory location for final shipment to the United States.

(4) *Maritimes.* ''Maritimes'' means New Brunswick, Canada; Nova Scotia, Canada; Prince Edward Island, Canada; and Newfoundland and Labrador, Canada.

(5) *Region.* ''Region'' means British Columbia Coast or British Columbia Interior as defined in paragraphs (a)(1) and (2) of this section; Alberta, Canada; Manitoba, Canada; Maritimes, Canada; Northwest Territories, Canada; Nunavut Territory, Canada; Ontario, Canada; Saskatchewan, Canada; Quebec, Canada; or Yukon Territory, Canada.

(6) *Region of Origin.* ''Region of Origin'' means the Region where the facility at which the softwood lumber product was first produced into such a product is located, regardless of whether that product was further processed (for example, by planing or kiln drying) or was transformed from one softwood lumber product into another such product (for example, a remanufactured product) in another Region, with the following exceptions:

(i) The Region of Origin of softwood lumber products first produced in the Maritime Provinces from logs originating in a non-Maritime Region will be the Region, as defined above, where the logs originated; and

(ii) The Region of Origin of softwood lumber products first produced in the Yukon, Northwest Territories or Nunavut (the 'Territories') from logs originating outside the Territories will be the Region where the logs originated.

(7) *SLA 2006.* ''SLA 2006'' or ''SLA'' means the Softwood Lumber Agreement entered into between the Governments of Canada and the United States on September 12, 2006.

(8) *Softwood lumber products.* ''Softwood lumber products'' mean those products described as covered by the SLA 2006 in Annex 1A of the Agreement.

(b) *Reporting requirements.* In the case of softwood lumber products from Canada listed in Annex 1A of the SLA 2006 as covered by the scope of the Agreement, the following information must be included on the electronic entry summary documentation (CBP Form 7501) for each entry (except for entries of softwood lumber products whose

Region of Origin is the Maritimes, in which case entry summary documentation must be submitted in paper as set forth in paragraph (c) of this section):

(1) *Region of Origin.* The letter code representing a softwood lumber product's Canadian Region of Origin, as posted on the Administrative Message Board in the Automated Commercial System. (For example, the letter code ''XD'' designates softwood lumber products whose Region of Origin is British Columbia Coast. The letter code ''XE'' designates softwood lumber products whose Region of Origin is British Columbia Interior.)

(2) *Export Permit Number*—(i) *Export Permit Number issued by Canada at time of filing entry summary documentation.* The 8-digit Canadian-issued Export Permit Number, preceded by one of the following letter codes:

(A) The letter code assigned to represent the date of shipment (*i.e.*, ''A'' represents January, ''B'' represents February, ''C'' represents March, *etc.*), except for those softwood lumber products produced by a company listed in Annex 10 of the SLA 2006 or whose Region of Origin is the Maritimes, Yukon, Northwest Territories or Nunavut;

(B) The letter code ''X'', which designates a company listed in Annex 10 of the SLA 2006; or

(C) The letter code assigned to represent the Maritimes (code M); Yukon (code Y); Northwest Territories (code W); or Nunavut (code N), for softwood lumber products originating in these regions.

(ii) *No Export Permit Number required due to softwood lumber product's exempt status.* Where an Export Permit Number is not required because the imported softwood lumber product is specifically identified as exempt from SLA 2006 export measures pursuant to Annex 1A of the Agreement, notwithstanding the fact that the exempt goods are classifiable in residual Harmonized Tariff Schedule of the United States provisions otherwise listed as covered by the SLA 2006, the alpha-numeric code ''P88888888'' must be used in the Export Permit Number data entry field on the CBP Form 7501.

(c) *Original Maritime Certificate of Origin.* Where a softwood lumber product's Region of Origin is the Maritimes, the original paper copy of the Certificate of Origin issued by the Maritime Lumber Bureau must be submitted to CBP and the entry summary documentation for each such entry must be in paper and not electronic. The Certificate of Origin must specifically state that the corresponding CBP entries are for softwood lumber products first produced in the Maritimes from logs originating in the Maritimes or State of Maine.

(d) *Recordkeeping.* Importers must retain copies of export permits, certificates of origin, and any other substantiating documentation issued by the Canadian Government pursuant to the recordkeeping requirements set forth in part 163 of title 19 to the CFR.

PART 113—CUSTOMS BONDS

■ 3. The general authority citation for part 113 continues to read as follows:

Authority: 6 U.S.C. 101, *et seq.;* 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.62 [Amended]

■ 4. In § 113.62, paragraph (k) is amended by:

■ a. Removing the term ''§ 12.140(a)'' and adding in its place the term ''§ 12.140'';

■ b. Removing the number ''20'' and adding in its place the number ''10''; and

■ c. Removing the word ''Customs'' and adding in its place the term ''CBP''.

PART 163—RECORDKEEPING

■ 5. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 6. The Appendix to part 163 is amended by removing the listing for § 12.140(c) and adding in its place § 12.140(b) and (c) under section IV to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 12.140(b) and (c) Canadian-issued Export Permit, Certificate of Origin issued by Canada's Maritime Lumber Bureau.

* * * * *

W. Ralph Basham,

Commissioner, U.S. Customs and Border Protection.

Approved: April 10, 2008.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E8–8095 Filed 4–16–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 189 and 700

[Docket No. 2004N–0081]

RIN 0910–AF47

Use of Materials Derived From Cattle in Human Food and Cosmetics

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule and request for comments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on the use of materials derived from cattle in human food and cosmetics. In these regulations, FDA has designated certain materials from cattle as ''prohibited cattle materials'' and has banned the use of such materials in human food, including dietary supplements, and in cosmetics. Prohibited cattle materials include specified risk materials (SRMs), the small intestine of all cattle unless the distal ileum is removed, material from nonambulatory disabled cattle, material from cattle not inspected and passed for human consumption, or mechanically separated (MS) (Beef). Specified risk materials include the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months of age and older, and the tonsils and distal ileum of the small intestine of all cattle. FDA is amending its regulations so that FDA may designate a country as not subject to certain bovine spongiform encephalopathy (BSE)-related restrictions applicable to FDA regulated human food and cosmetics. A country seeking to be so designated must send a written request to the Director of FDA's Center for Food Safety and Applied Nutrition, including information about the country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and any other relevant information.

DATES: This interim final rule is effective July 16, 2008. Submit written or electronic comments on this interim final rule by July 16, 2008. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by May 19, 2008 (see the ''Paperwork Reduction Act of 1995'' section of this document).

ADDRESSES: You may submit comments, identified by Docket No. 2004N–0081 and RIN 0910–AF47, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No. and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see section IV of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Rebecca Buckner, Center for Food Safety and Applied Nutrition (HFS–316), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1486.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 14, 2004 (69 FR 42256), FDA issued an interim final rule entitled ''Use of Materials Derived From Cattle in Human Food and Cosmetics'' (''the 2004 IFR'') to address the potential risk of BSE in human food and cosmetics. In the 2004 IFR, FDA designated certain materials from cattle as ''prohibited cattle materials'' and banned the use of such materials in human food, including dietary supplements, and in cosmetics. These restrictions appear in §§ 189.5 and 700.27 (21 CFR 189.5 and 21 CFR 700.27) of FDA's regulations.

The 2004 IFR designated the following as prohibited cattle materials: SRMs, the small intestine from all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed for human consumption, or MS (Beef). SRMs include the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months of age and older, and the tonsils and distal ileum of the small intestine from all cattle. The Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA) designated the same list of materials as SRMs in its interim final rule entitled ''Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle'' (69 FR 1862, January 12, 2004).

In the **Federal Register** of September 7, 2005 (70 FR 53063), FDA amended the 2004 IFR to permit the use of the small intestine in human food and cosmetics provided the distal ileum portion of the small intestine has been removed. FDA also clarified that milk and milk products, hide and hide-derived products, and tallow derivatives are not prohibited cattle materials, and cited a different method for determining impurities in tallow. Also in the **Federal Register** of September 7, 2005 (70 FR 53043), FSIS published a similar amendment to its interim final rule, permitting the use of the small intestine in human food provided the distal ileum is removed.

II. Amendments to the Interim Final Rule's Provisions on Prohibited Cattle Materials

In the 2004 IFR, FDA requested comment on whether materials from countries believed to be free of BSE should be exempt from the ''prohibited cattle materials'' requirements. FDA further solicited comment on what standards it should apply in determining whether to exempt a country and how it should determine whether a country meets such standards (69 FR 42256 at 42263). FSIS requested similar comment on the issue of equivalence in applying its BSE requirements in an advance notice of proposed rulemaking (ANPR) entitled ''Federal Measures to Mitigate BSE Risks: Considerations for Further Actions,'' jointly published by USDA's Animal and Plant Health Inspection Service (APHIS) and FSIS, and FDA on July 14, 2004 (69 FR 42299–42300).

A. Comments Received

In response to FDA's solicitation on this issue, FDA received comments from representatives of several foreign countries that export cattle materials or products derived from such materials into the United States and from several trade associations. The comments take issue with the uniform application of FDA's BSE-related measures to all human food and cosmetics imported into the United States, without regard to the BSE risk status of the originating country. Several comments state that their countries have a comprehensive range of control measures in place to prevent the entry and/or amplification of the BSE agent. These comments maintain that countries classified as BSE-free do not present a BSE risk and therefore should not be expected to comply with FDA's BSE-related restrictions. These comments further maintain that U.S. requirements are forcing establishments and firms in countries considered to be free of BSE to carry out costly and unnecessary measures that are not scientifically justified so that they can export cattle materials to the United States.

These comments also state that providing an exemption from BSE-related restrictions for countries classified as free of BSE would be consistent with guidelines established by the World Organization for Animal Health (referred to as ''OIE,'' based on its previous name, Office International des Epizooties), an international standard-setting body with 169 member countries, that publishes health standards for international trade in animal products. These comments state that the OIE recommends that countries restrict the importation of cattle material of potential concern on the basis of the BSE risk classification of the country or zone of origin. (See Terrestrial Animal Health Code, Ref. 1). These comments also point out that OIE recommends the removal of SRMs for imports from countries classified as minimal, moderate, and high risk for BSE but not for imports from countries with BSE-free status.[1] Further, these comments

[1] At the time the comments were submitted, OIE classified countries for purposes of BSE into one of five categories: ''free,'' ''provisionally free,'' ''minimal,'' ''moderate,'' and ''high risk.'' OIE subsequently revised its categories and now uses only three categories: ''negligible,'' ''controlled,''

point out that the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) requires member countries to recognize regionalization of diseases and not put in place measures that are more trade restrictive than necessary to achieve public health goals.

Several of the comments also note that Canada and the European Union (EU) do not apply all of their BSE-related restrictions to countries recognized as BSE-free. For example, EU food and cosmetic regulations exclude countries that fall within the EU's lowest risk range of BSE risk categories from restrictions on the use of SRMs. Canada provides a similar exemption from its BSE-related restrictions for countries it considers to be free from BSE.[2]

One comment suggests that in considering the BSE risk status of another country, FDA should refer to available country assessments already completed by USDA's APHIS in carrying out its BSE-related restrictions on imports of meat and edible products from ruminants (codified at 9 CFR 94.18), or otherwise rely on criteria provided by OIE for determining BSE-free countries. One comment recommends that if the assessment is conducted by U.S. authorities, it should be conducted by a single U.S. agency, preferably APHIS, given its prior experience in conducting this type of assessment.

B. USDA Amendment

USDA's FSIS received similar comments in response to its interim final rule published on January 12, 2004, and the ANPR published July 14, 2004, regarding the application of its BSE-related restrictions for imported products without taking into account a country's BSE risk status. Based in part on these comments, FSIS, in its affirmation of interim final rules with amendments published on July 13, 2007 (72 FR 38699), amended its regulations to exclude from its definition of SRMs those materials from cattle that come from foreign countries that can demonstrate that their BSE risk status can reasonably be expected to provide the same level of protection from exposure to the BSE agent as does prohibiting the use of SRMs in the United States.

C. Response to Comments

FDA agrees with the views expressed by the comments and has determined that it is not necessary for all BSE-related restrictions to apply to human food and cosmetics regardless of a country's BSE status. FDA's BSE-related restrictions for human food and cosmetics are intended to address the potential presence of BSE in a country's cattle population. SRMs are prohibited because they are the tissues most likely to harbor infectivity in cattle with BSE. The small intestine is prohibited unless the distal ileum portion of the small intestine, which is considered an SRM, is effectively removed. Material from nonambulatory disabled cattle are prohibited because evidence has indicated that this segment of the cattle population is more likely to have BSE than healthy-appearing cattle and the typical clinical signs of BSE having to do with gait and movement cannot be observed in nonambulatory cattle. MS (Beef) is included in the definition because it may contain concentrated amounts of the following SRMs: spinal cord, dorsal root ganglia, and vertebral column. Material from cattle not inspected and passed is prohibited because they are at higher risk of harboring undetected BSE.

As described in the 2004 IFR, epidemiological evidence indicates that the BSE epidemic in the United Kingdom (U.K.) was a result of consumption of animal feed contaminated by the BSE agent. The spread of BSE outside the U.K. has been attributed to the export of BSE-contaminated feed from the U.K. to other countries prior to the realization of the role of feed in transmitting the disease and the implementation of restrictions on such trade. However, a country may not have engaged in trade in animal feed with the U.K. or other affected countries, and it may have had preventive measures in place for a length of time adequate to make the chance remote that BSE currently is present in its national herds.

Such a country may be able to demonstrate to FDA that its BSE case history, risk factors, and measures to prevent the introduction and transmission of BSE make certain BSE-related restrictions unnecessary. Not restricting cattle materials inspected and passed for human consumption from such a country to be used in human food and cosmetics is consistent with all applicable statutory standards. Further, this approach is consistent with OIE's recommendation that cattle materials from negligible risk countries not be restricted.

Material from cattle not inspected and passed for human consumption will continue to be prohibited, regardless of the country of origin. We are retaining this provision as a universal requirement because the exception for designated countries in this amendment is predicated on application of a country's food safety controls, including inspection of source animals, to human food or cosmetics made with cattle materials and imported into the United States. It is critical to ensuring safety that, regardless of the country of origin, source cattle have been evaluated and determined appropriate for human consumption. In addition, applying this requirement universally is consistent with OIE recommendations, which recognize the importance that cattle pass antemortem and post-mortem inspections even in ''negligible risk'' countries.

Therefore, FDA is amending its regulations in §§ 189.5 and 700.27 to provide that FDA may designate a country as not subject to the restrictions applicable to human food and cosmetics manufactured from, processed with, or that otherwise contain SRMs, the small intestine of cattle, material from nonambulatory disabled cattle, or MS (Beef). Cattle materials inspected and passed from a designated country will not be considered prohibited cattle materials and their use will not render a human food or cosmetic adulterated. The amendment further provides that a country seeking to be so designated must send a written request to the Director of FDA's Center for Food Safety and Applied Nutrition, including information about a country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and other information relevant to determining whether SRMs, the small intestine of cattle (unless the distal ileum has been removed), material from nonambulatory disabled cattle, or MS (Beef) should be considered prohibited cattle materials.

In its application, the requesting country will be expected to provide information to FDA on its BSE case history, including whether cattle in that country have tested positive for BSE, and if so, the circumstances and the country's response. In addition, FDA will review information that addresses the extent to which the requesting country has identified and taken into account relevant risk factors such as the following:

- Possible presence of BSE in indigenous and/or imported cattle;

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and ''undetermined'' risk. Countries previously categorized as ''BSE-free'' or ''provisionally free'' are now categorized as having ''negligible'' BSE risk.

[2] Since these comments were submitted, Canada has adopted the OIE BSE risk categorization system of negligible, controlled, and undetermined risk. The EU is in the process of transitioning from its geographical BSE risk (GBR) system, which includes four levels of risk, to the OIE 3-tiered risk categorization system.

- Geographic origin of imported cattle;
- Materials used in the production of ruminant feed and feed ingredients; and
- Importation of ruminant feed and feed ingredients.

FDA will consider information relating to the possible presence of BSE in indigenous and imported cattle in the requesting country as well as the requesting country's production and importation of ruminant feed and feed ingredients. With respect to imported cattle, relevant information includes the identification of any countries where imported cattle were born or raised and the dates any cattle were imported. With regard to ruminant feed, FDA will consider, among other things, how ruminant feed was produced in the requesting country, including what animal origin materials were allowed to be included. FDA will also consider whether ruminant feed and feed ingredients were imported, and if so, the source countries and dates of import.

In addition to reviewing risk factors such as those identified previously, FDA will assess how the requesting country has addressed and managed any identified BSE risks through the implementation of appropriate measures to prevent the introduction and transmission of BSE. FDA will consider how long such preventive measures have been in place and whether they have been effectively carried out. Examples of preventive measures include the following:

- A prohibition on the use of ruminant feed that might carry a risk of transmitting the BSE agent;
- A prohibition on the importation of cattle and cattle-derived products that might carry a risk of transmitting the BSE agent;
- Surveillance systems for BSE in cattle populations with appropriate examination of brain or other tissues collected for surveillance in approved laboratories;
- Mandatory notification and examination of all cattle showing signs consistent with BSE; and
- Protocols or other written procedures for investigating potential cases of BSE, including ability to trace former herdmates of BSE-positive animals.

As part of its evaluation of feed restrictions, FDA will consider factors including whether appropriate feed restrictions are in place and the adequacy of enforcement of those restrictions (e.g., the frequency of facility inspections and level of compliance). FDA also will consider a requesting country's import controls for cattle material. Such consideration will include whether the country effectively monitors and controls potential pathways of SRMs and other potentially infective materials into its country from other countries for whom such controls are necessary.

In addition, FDA will consider the requesting country's surveillance and monitoring efforts with respect to BSE. For example, FDA will evaluate the level at which the country performs surveillance and monitoring, whether tissue samples are collected and examined at approved laboratories, and whether recognized diagnostic procedures and methods are used, such as those procedures and methods provided in the OIE Manual of Diagnostic Tests and Vaccines for Terrestrial Animals (Ref. 2).

FDA also will consider whether the country has an ongoing program for notification and investigation of all cattle showing signs consistent with BSE. In evaluating such a program, FDA will consider, among other factors, whether notification and investigation are mandated, whether veterinarians, producers, and others involved in cattle production have been provided sufficient information about BSE, such as through an awareness program, and whether there are additional measures in place to stimulate reporting of suspect cattle, such as compensation or penalties.

FDA also will consider a country's written procedures for investigating potential cases of BSE. Such a consideration will include whether the country has written procedures for the investigation of suspect animals and whether the country has the investigative capability to followup positive findings by tracing former herdmates of animals determined to be BSE positive. Finally, FDA also will consider any other information relevant to determining whether the country should be designated under §§ 189.5(e) and 700.27(e).

FDA and the USDA agencies, APHIS and FSIS, have different regulatory responsibilities with respect to preventing BSE and ensuring food safety. Further, it is not necessary or practical for one of the three agencies to conduct every evaluation of a country's BSE status, regardless of the purpose of the evaluation. FDA will, however, consult with APHIS and FSIS as part of its evaluation process. Further, FDA will take into consideration available risk assessments of other competent authorities in conducting its evaluation. Though it is not required, a previous BSE evaluation by USDA, OIE, or by another country or another competent authority, will be helpful to FDA in its review and may decrease the time needed for FDA to make a determination.

Upon completion of its review, FDA will provide written notification of its decision to the applicant country, including the basis for the decision. FDA may impose conditions in granting a request for designation. Further, any designation granted under § 189.5 or § 700.27 will be subject to future review by FDA to ensure that the designation remains appropriate. As part of this process, FDA may ask designated countries to confirm that their BSE situation and the information submitted by them in support of their original application remain unchanged. Further, FDA may revoke a country's designation if FDA determines that it is no longer appropriate.

FDA will provide further information on its evaluation process, the scope of the review, and the types of supporting information that it would find helpful in reviewing a country's submission at the time of the request.

III. Summary of Amendments to the Interim Final Rule

FDA is amending its regulations in §§ 189.5(a) and 700.27(a) by revising the definition of ''prohibited cattle materials'' to exclude cattle materials inspected and passed for human consumption from a country designated by FDA under § 189.5(e) or § 700.27(e). New §§ 189.5(e) and 700.27(e) provide that a country seeking such a designation must send a written request to the Director, Office of the Center Director, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. Further, the request shall include information about a country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and other information relevant to determining whether SRMs, the small intestine of cattle (unless the distal ileum has been removed), material from nonambulatory disabled cattle, or MS (Beef) should be considered prohibited cattle materials. The new sections further provide that FDA shall respond in writing to any such request and that FDA may revoke a country's designation if FDA determines that it is no longer appropriate.

IV. Effective Date and Opportunity for Public Comment

In the 2004 IFR, FDA solicited comment on whether materials from countries believed to be free from BSE should be exempt from the ''prohibited cattle materials'' requirements. FDA

addresses the comments it received in this document. This amendment is effective on July 16, 2008. FDA invites public comment on the current amendment to the interim final rule; submit written or electronic comments on the interim final rule by July 16, 2008. The agency will consider modifications to the current amendment to the interim final rule based on comments made during the comment period. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA through FDMS only.

FDA will address other comments received in response to the 2004 IFR and comments received in response to this document in further rulemaking.

V. Executive Order 12866 and Regulatory Flexibility Act

A. Interim Final Regulatory Impact Analysis

FDA has examined the economic impacts of the interim final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this interim final rule is not a significant regulatory action as defined by Executive Order 12866.

1. Need for Regulation

FDA agrees with FSIS and the international community that cattle materials imported from countries that can demonstrate that their BSE case history and their having in place effective measures to prevent the introduction and transmission of BSE may be such that they should not be subject to the same BSE-related restrictions applied to cattle materials imported into the United States from other countries. Restricting the importation of potentially infective materials on the basis of the BSE risk of the region of origin is more efficient than an approach that does not consider a country's circumstances regarding BSE.

As comments on the 2004 IFR have noted, the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) requires member countries to recognize regionalization of diseases and not put in place measures that are more trade restrictive than necessary to achieve public health goals. Thus, the uniform application by FDA of BSE-related restrictions to all imports of food and cosmetic products into the United States without taking into account a country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and other relevant information means that other countries must implement costly and unnecessary measures that may not be scientifically justified. Providing this exception from certain requirements relating to human food and cosmetics for designated countries is more efficient in the sense that it achieves essentially the same protection of public health with fewer restrictions on the market for cattle-derived materials.

2. Interim Final Rule Coverage

Foreign countries need to make formal application to FDA in order to be considered for this exception from the provision on prohibited cattle materials in §§ 189.5 and 700.27. FDA will make a determination as to a country's request based on an evaluation that is carried out in consultation with the USDA's APHIS and FSIS. FDA will take into consideration relevant technical information provided by the requesting country with respect to its BSE case history, including whether cattle in that country have tested positive for BSE, and if so, the circumstance and the country's response. In addition, FDA will review information that addresses the extent to which the requesting country has identified and taken into account relevant risk factors such as the following:

- The possible presence of BSE in indigenous and/or imported cattle;
- Geographic origin of imported cattle;
- Materials used in the production of ruminant feed and feed ingredients; and
- Importation of ruminant feed and feed ingredients.

FDA will also assess how the requesting country has addressed and managed any identified BSE risks through the implementation of appropriate measures to prevent the introduction and transmission of BSE, such as the following:

- A prohibition on the use of ruminant feed that might carry a risk of transmitting the BSE agent;
- A prohibition on the importation of cattle and cattle-derived products that might carry a risk of transmitting the BSE agent;
- Surveillance systems for BSE in cattle populations with appropriate examination of brain or other tissues collected for surveillance in approved laboratories;
- Mandatory notification and examination of all cattle showing signs consistent with BSE; and
- Protocol or other written procedures for investigating potential cases of BSE, including ability to trace former herdmates of BSE-positive animals.

Number of Countries Affected

We do not know how many countries will take advantage of the option to petition FDA for a designation under §§ 189.5(e) and 700.27(e). According to information from the OIE, countries that are officially recognized as having a ''negligible BSE risk'' in accordance with the requirements of the OIE Terrestrial Animal Health Code (16th edition 2007) include the following: Australia, Argentina, New Zealand, Singapore, and Uruguay. Two countries, Iceland and Paraguay, are recognized as ''provisionally free''[3] from BSE. For these two categories of countries, OIE does not recommend the removal of SRMs (Ref. 4).

Table 1 presents data from the U.S. International Trade Commission (Ref. 5) showing for 2006 the top 10 exporters of meat products[4] and animal fats, oils, and by-products to the United States.

[3] The OIE ''provisionally free'' designation is in accordance with the 2004 edition (13th edition) of the Terrestrial Animal Health Code, and remains in effect for Iceland and Paraguay until May 2008. See Ref. 3.

[4] The data sorted by NAICS code does not allow for the separation of beef products that are imported from other imported meat products such as pork.

TABLE 1.—TOP 10 COUNTRIES EXPORTING SPECIFIED NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODE PRODUCTS TO UNITED STATES FOR 2006

NAICS 311611[1]—Meat Products (Excluding Poultry)	Quantity (thousands of kilograms)[2]
Canada	681,899
Australia	376,585
New Zealand	211,873
Uruguay	103,305
Brazil	83,897
Denmark	46,652
Mexico	35,553
China	28,530
Argentina	22,353
Nicaragua	21,303
NAIC 311613—Animal Fats, Oils, & By-Products	**(thousands of kilograms)[3]**
Canada	94,306
New Zealand	32,550
China	7,809
Australia	6,807
Brazil	6,589
Mexico	2,130
Colombia	1,826
Germany	1,642
Ecuador	1,149
Japan	1,138

[1] The NAIC code 31161 covers the animal slaughtering and processing industry. The industry is composed of establishments that are primarily engaged in one or more of the following: (1) Slaughtering animals, (2) preparing processed meats and meat by-products, and (3) rendering and refining animal fat, bones, and meat scraps. The subcategory 311611 comprises those establishments primarily engaged in slaughtering animals (except poultry and small game). Establishments that slaughter and prepare meats are included in this classification. (Ref. 5) We use this data as an indicator of the countries that are most likely to petition FDA regarding their BSE status.

[2] These figures do not include exports measured in ''clean yield kilograms'' and ''pieces.''

[3] These figures do not include exports measured in ''grams,'' ''liters,'' ''metric tons,'' and ''pieces.''

[3] These figures do not include exports measured in ''grams,'' ''liters,'' ''metric tons,'' and ''pieces.''

We do not know how many countries might petition the FDA. However, taking into consideration the previous information on countries officially recognized as having a negligible BSE risk or being provisionally free of BSE under OIE, as well as the information in table 1 on countries that export large amounts of meat products and animal fats, oils, and byproducts to the United States, we are estimating for this analysis that 10 countries may be interested in petitioning FDA to be excepted from certain BSE-related restrictions applicable to human food and cosmetics. Our estimate is not intended to suggest that all of these countries would be able to qualify for a designation under §§ 189.5(e) and 700.27(e).

3. Costs and Benefits of Exemption Provision

Countries that petition the FDA to be designated as excepted from certain BSE-related restrictions applicable to human food and cosmetics may also petition USDA for exclusion from USDA's BSE-related requirements. Some of the costs to countries to petition FDA may be shared with costs to petition USDA because of similarities regarding how countries' products can qualify for the exceptions. Even so, we will outline here a potential scenario for calculating the costs of petitioning FDA for an exception from certain provisions of the agency's BSE regulations.

a. *Assumptions and costs associated with this interim final rule.* We would expect countries that wish to petition FDA to be excepted from certain BSE-related restrictions applicable to human food and cosmetics to have already completed a risk assessment and put risk management strategies into place.[5] Whether these risk assessment and mitigation strategies are sufficient for a country to be so designated by FDA will be determined on a case-by-case basis.

b. *Petition process.* We assume petitions to FDA for this designation would include an already developed risk assessment or other technical information on the country's BSE situation, a detailed outline of risk mitigation strategies, and information on the country's cattle-derived products that are exported to the United States. The petition is assumed to take 80 hours per country for assembly of the information and the wage for a government employee earning a GS–14 step 1 (Ref. 6) is used to estimate the costs. The cost of assembling a single petition is estimated to be about $5,400 (80 hours x $67.44 per hour including overhead). The petition will also be reviewed by higher level government managers before being sent to the FDA. We assume the wage for a high level government executive is a GS–15 step 3 (Ref. 6) and that they will spend 40 hours reviewing the petition. The cost of review by a government manager is estimated to be about $3,400 (40 hours x $84.62 per hour including overhead). Thus, the total cost to each country to prepare and submit a petition to FDA to be considered for this designation would be about $9,000.

c. *Petition review by FDA.* It will take FDA approximately 80 hours to review a petition. The cost of each petition review would be about $3,700 (80 hours x $45.65 per hour).[6]

TABLE 2.—TOTAL COST OF INITIAL PETITION APPLICATION AND REVIEW

Petition Assembly and Review per Country	$9,000
FDA Review per Petition	$3,700
Total Cost per Country	$12,700
Cost for 10 Countries	$127,000

d. *Petition success uncertainty.* It is possible that some countries that petition the FDA to be designated as excepted from certain BSE-related restrictions applicable to human food and cosmetics will not be successful. We do not know how likely it will be that countries with insufficient BSE risk assessment and mitigation strategies will petition the FDA.

e. *Future petitions to FDA.* It is likely that those countries that currently sell a significant amount of cattle-derived material will be most interested in seeking possible relief under this change to FDA's prohibited cattle materials requirements. It is possible in the future, if new markets for cattle derived products develop, that other countries may want to petition FDA to be designated as not subject to certain BSE-related restrictions applicable to human food and cosmetics. We do not attempt to forecast new markets for cattle derived products here. We also do not attempt to forecast the frequency of, or estimate the costs associated with, FDA review in the future of successful petitions.

f. *Future review of successful petitions by FDA.* Countries that successfully

[5] We assume such measures were necessary to continue marketing cattle products following the surge of BSE cases in the U.K. and the rulemakings that followed.

[6] Pay for an employee earning a GS-13 step 7 adjusted to include locality pay for Washington D.C. and surrounding area (Ref. 6).

petition the FDA to be designated as excepted from certain BSE-related restrictions applicable to human food and cosmetics will be subject to future review by FDA to ensure that their designation remains appropriate. As part of this process, FDA may ask designated countries to confirm that their BSE situation and the information submitted by them in support of their original application remain unchanged. FDA may revoke a country's designation if FDA determines that it is no longer appropriate.

FDA has not yet determined the method by which the agency will conduct these future reviews. One possible method would be for FDA to send a letter to designated countries asking whether there has been a change in their status or circumstances relative to their BSE history, surveillance, import activities, or other relevant criteria and then compare any changed information with the information that was originally submitted. The OIE requires that countries it has recognized in regard to their BSE status ''should annually confirm during the month of November whether their status and the criteria by which their status was recognized have remained unchanged.'' In some cases, the FDA reviewer might rely on this information, if available, in conducting a future review of the country's designation.

We assume it will take FDA and the designated country undergoing a review in the future about one third the time and effort it did when the original information was submitted. Thus, if the total cost to initially submit a petition and have it reviewed by FDA was $12,700, then a future review of the petition by FDA and the submitting country will cost about $4,200 (see Table 3).

TABLE 3.—COST OF FUTURE REVIEW OF SUCCESSFUL PETITIONS

Submission of Additional Information and Response by Country	$3,000
FDA Review per Country	$1,200
Total Cost per Country	$4,200
Cost for 10 Countries	$42,000

4. Other Options Considered

FDA considered the following options when examining the costs and benefits of this IFR.

Option 1—Do nothing.

This option is the baseline for which the costs and benefits of other options are compared. The costs and benefits of this option have already been realized. Firms buying and selling cattle-derived materials in the United States and other countries have found alternatives to using products covered by the definition of prohibited cattle materials in the manufacture of their products.

Option 2—Amend definition of prohibited cattle materials (the chosen option).

The costs and benefits of this option are outlined previously. The main benefit of this option is that it is more efficient than the current regulation because it achieves essentially the same protection of public health with fewer restrictions on the market for cattle-derived materials. With this interim final rule, FDA can continue to prevent the potential introduction and transmission of BSE from cattle materials from non-designated countries, while at the same time reducing the restrictions on the market for cattle-derived materials from designated countries.

Option 3—Amend the definition of prohibited cattle materials to allow material from cattle not inspected and passed for human consumption for use in human food and cosmetics.

This option is less stringent than option 2, which would reduce the costs of cattle-derived materials used in the manufacture of human food and cosmetics, but it would not provide the same public health benefits as options 1 and 2. Material from cattle not inspected and passed for human consumption has not been approved by a regulatory authority (USDA or other) and thus we cannot make the determination that, among other things, the cattle material is from an animal that was evaluated for a neurological disorder such as BSE. In requiring that material from cattle for use in FDA-regulated human food and cosmetics be inspected and passed for human consumption, we are minimizing the risk of exposure to the agent that causes BSE, and therefore maximizing the protection of public health from variant Creutzfeldt-Jakob disease, the human disease linked to consumption of BSE-infected cattle material.

5. Benefits

Under this interim final rule, foreign countries would have the option of demonstrating (through information submitted to FDA) that their BSE case history, their identifying and taking into account relevant risk factors, their implementing appropriate measures to prevent the introduction and transmission of BSE, and any other relevant information shows that certain BSE-related restrictions, in their case, are unnecessary. Countries that successfully petition FDA would be able to again export human food and cosmetics to the United States without the removal of the following items:

- SRMs
- Small intestine (including the distal ileum)
- Material from nonambulatory disabled cattle
- MS (Beef)

6. Effect on Food Supply in the United States

We expect this interim final rule amendment will increase the availability of certain cattle materials (and products containing those materials) for sale in the United States. The most significant gain in supply will probably occur from the increased availability of FDA-regulated products that contain MS (Beef) and material from nonambulatory disabled cattle for use in human food regulated by FDA. Few, if any, human food or cosmetic products use SRMs as an ingredient, but to the extent that these materials are needed, they will again be available in the United States.

B. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Because this rule is being issued as an interim final rule, the RFA does not apply and FDA is not required to either certify that the rule will not have a significant impact on a substantial number of small businesses or conduct an initial regulatory flexibility analysis. Also, FDA does not have information on how many small firms in foreign countries designated by the agency may benefit from this rule. Examining the effect this interim final rule has on small foreign firms is outside the scope of the RFA requirements.

The extent to which small firms within the United States are affected by this rule is unknown. FDA

acknowledges that small U.S. businesses that use imported cattle materials in manufacture or for sale as final products will likely benefit from this rulemaking as costs of these inputs are expected to decrease as supply increases. Small U.S. firms that compete with foreign firms in order to supply cattle-derived inputs and products to U.S. business and markets may be adversely affected if foreign firms can more cheaply supply these materials and products. FDA seeks public comment on the question of whether such small U.S. businesses will be adversely impacted by this rule.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rule making if the rule would include a ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. FDA has determined that this interim final rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

VI. Paperwork Reduction Act of 1995

This interim final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of these provisions are shown in the following paragraphs with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Petition To Be Designated as Not Subject to Certain BSE-Related Restrictions Applicable to FDA Regulated Human Food and Cosmetics

Description: FDA is amending the interim final rule on use of materials derived from cattle in human food and cosmetics published in the **Federal Register** of July 14, 2004, and then amended on September 7, 2005. In the 2004 interim final rule and its amendments, FDA designated certain materials from cattle as ''prohibited cattle materials'' and banned the use of such materials in human food, including dietary supplements, and in cosmetics. Prohibited cattle materials include SRMs, the small intestine of all cattle unless the distal portion of the ileum is removed, material from nonambulatory disabled cattle, material from cattle not inspected and passed for human consumption, and MS (Beef). SRMs include the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older; and the tonsils and distal ileum of the small intestine of all cattle. Therefore, FDA is amending its regulations at §§ 189.5 and 700.27 to provide that FDA may designate a country as not subject to the restrictions applicable to human food and cosmetics manufactured from, processed with, or that otherwise contain SRMs, the small intestine of cattle, material from nonambulatory disabled cattle, or MS (Beef). The interim final rule, as amended, provides that these materials, when from cattle from a designated country, are not considered prohibited cattle materials, and their use does not render a human food or cosmetic adulterated. The amendment further provides that a country seeking to be so designated must send a written request to the Director of FDA's Center for Food Safety and Applied Nutrition, including information about a country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and other information relevant to determining whether SRMs, the small intestine of cattle (unless the distal ileum has been removed), material from nonambulatory disabled cattle, or MS (Beef) should be considered prohibited cattle materials.

Description of Respondents: Countries with firms that would like to use SRMs, the small intestine of cattle, material from nonambulatory disabled cattle, or MS (Beef) in products exported to the United States.

Information Collection Burden Estimate

FDA estimates the burden for this information collection as follows:

TABLE 4.—ESTIMATED ONE-TIME AND RECURRING REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
189.5 and 700.27[2]	10	1	10	80	800
189.5(e) and 700.27(e)	10	1	10	26.4	264
Total one time burden					800
Total recurring burden					264

[1] There are no capital costs or operating and maintenance costs associated with the collection of information under this interim final rule.
[2] One-time burden.

One Time Reporting Burden

There will be a one time burden to countries that apply to FDA seeking to be designated as not subject to restrictions applicable to SRMs, the small intestine of cattle, nonambulatory disabled cattle, or MS (Beef). We estimate that each country that applies for an exclusion will spend 80 hours putting information together to submit to FDA. Table 4 row 3 of this document presents the one-time burden expected for countries who apply for the exclusion.

Recurring Burden

Countries that successfully petition the FDA to be designated as excepted from certain BSE-related restrictions applicable to human food and cosmetics will be subject to future review by FDA to ensure that their designation remains appropriate. As part of this process, FDA may ask designated countries from time to time to confirm that their BSE situation and the information submitted by them in support of their original application remain unchanged. We assume it will take FDA and the designated country undergoing a review in the future about one third the time and effort it did when the information was submitted. Table 4 row 4 of this document presents the expected recurring burden.

The information collection provisions of this interim final rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding information collection by (see **DATES**), to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

Prior to the effective date of this interim final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this interim final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VII. Environmental Impact Analysis

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive Order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' FDA has determined that the interim final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the interim final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. World Organization for Animal Health, Terrestrial Animal Health Code (2007), Chapter 2.3.13, Bovine Spongiform Encephalopathy. See also Appendix 3.8.4 (Surveillance for Bovine Spongiform Encephalopathy) and Appendix 3.8.5 (Factors to Consider in Conducting the Bovine Spongiform Encephalopathy Risk Assessment Recommended in Chapter 2.3.13). Accessed online at *http://www.oie.int/eng/normes/mcode/en_sommaire.htm*.

2. World Organization for Animal Health, Manual of Diagnostic Tests and Vaccines for Terrestrial Animals 2004 (updated 2006). Accessed online at *http://www.oie.int/eng/normes/mmanual/A_summry.htm*.

3. World Organization for Animal Health (OIE), Recognition of the Bovine Spongiform Encephalopathy Status of Member Countries, OIE Resolution No. XXIV, adopted by the International Committee of the OIE on May 22, 2007. See *http://www.oie.int/eng/info/en_statesb.htm?eld6*, accessed August 30, 2007.

4. United States International Trade Commission, Interactive Tariff and Trade Dataweb, *http://dataweb.usitc.gov/*, accessed April 6, 2007.

5. NAICS Association, *http://www.naics.com/censusfiles/NDEF311.HTM*, accessed August 27, 2007.

6. U.S Office of Personnel Management Salaries and Wages 2007 General Schedule, *http://www.opm.gov/oca/07tables/indexGS.asp*, accessed on April 11, 2007.

List of Subjects

21 CFR Part 189

Food additives, Food packaging.

21 CFR Part 700

Cosmetics, Packaging and containers.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 189 and 700 are amended as follows:

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

■ 1. The authority citation for 21 CFR part 189 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371, 381.

■ 2. Section 189.5 is amended by revising paragraph (a)(1) and by adding paragraph (e) to read as follows:

§ 189.5 Prohibited cattle materials.

(a) * * *

(1) Prohibited cattle materials means specified risk materials, small intestine of all cattle except as provided in paragraph (b)(2) of this section, material from nonambulatory disabled cattle, material from cattle not inspected and passed, or mechanically separated (MS) (Beef). Prohibited cattle materials do not include the following:

(i) Tallow that contains no more than 0.15 percent insoluble impurities, tallow derivatives, hides and hide-derived products, and milk and milk products, and

(ii) Cattle materials inspected and passed from a country designated under paragraph (e) of this section.

* * * * *

(e) *Process for designating countries.* A country seeking designation must send a written request to the Director, Office of the Center Director, Center for Food Safety and Applied Nutrition, Food and Drug Administration, at the address designated in 21 CFR 5.1100. The request shall include information about a country's bovine spongiform encephalopathy (BSE) case history, risk factors, measures to prevent the introduction and transmission of BSE, and any other information relevant to determining whether specified risk materials, the small intestine of cattle except as provided in paragraph (b)(2) of this section, material from nonambulatory disabled cattle, or MS (Beef) from cattle from the country should be considered prohibited cattle materials. FDA shall respond in writing to any such request and may impose conditions in granting any such request. A country designation granted by FDA under this paragraph will be subject to future review by FDA, and may be revoked if FDA determines that it is no longer appropriate.

PART 700—GENERAL

■ 3. The authority citation for 21 CFR part 700 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374.

■ 4. Section 700.27 is amended by revising paragraph (a)(1) and by adding paragraph (e) to read as follows:

§ 700.27 Use of prohibited cattle materials in cosmetic products.

(a) * * *

(1) Prohibited cattle materials means specified risk materials, small intestine of all cattle except as provided in paragraph (b)(2) of this section, material from nonambulatory disabled cattle, material from cattle not inspected and passed, or mechanically separated (MS) (Beef). Prohibited cattle materials do not include the following:

(i) Tallow that contains no more than 0.15 percent insoluble impurities, tallow derivatives, hides and hide-derived products, and milk and milk products, and

(ii) Cattle materials inspected and passed from a country designated under paragraph (e) of this section.

* * * * *

(e) *Process for designating countries.* A country seeking designation must send a written request to the Director, Office of the Center Director, Center for Food Safety and Applied Nutrition, Food and Drug Administration, at the address designated in 21 CFR 5.1100. The request shall include information about a country's bovine spongiform encephalopathy (BSE) case history, risk factors, measures to prevent the introduction and transmission of BSE, and any other information relevant to determining whether specified risk materials, the small intestine of cattle except as provided in paragraph (b)(2) of this section, material from nonambulatory disabled cattle, or MS (Beef) from cattle from the country should be considered prohibited cattle materials. FDA shall respond in writing to any such request and may impose conditions in granting any such request. A country designation granted by FDA under this paragraph will be subject to future review by FDA, and may be revoked if FDA determines that it is no longer appropriate.

Dated: April 11, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. 08–1142 Filed 4–15–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9393]

RIN 1545–BF97

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G in instances where an employee has not established an HSA by December 31st and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses. These final regulations affect employers that contribute to employees' HSAs and their employees.

DATES: *Effective Date:* These regulations are effective on April 17, 2008.

Applicability Date: These regulations apply to employer contributions made for calendar years beginning on or after January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mireille Khoury at (202) 622–6080.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2090. The collection of information in these final regulations is in Q & A–14. This information is needed for purposes of making HSA contributions to employees who establish an HSA after the end of the calendar year but before the last day of February or who have not previously notified their employer that they have established an HSA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final Pension Excise Tax Regulations (26 CFR part 54) under section 4980G of the Internal Revenue Code (Code). Under section 4980G, an excise tax is imposed on an employer that fails to make comparable contributions to the HSAs of its employees.

On August 26, 2005, proposed regulations (REG–138647–04) on the comparability rules of section 4980G were published in the **Federal Register** (70 FR 50233). On July 31, 2006, final regulations (REG–138647–04) on the comparability rules were published in the **Federal Register** (71 FR 43056). The final regulations clarified and expanded upon the guidance regarding the comparability rules published in Notice 2004–2 (2004–2 IRB 296) and in Notice 2004–50 (2004–33 IRB 196), Q & A–46 through Q & A–54. See § 601.601(d)(2). Q & A–6(b) of the final regulations reserved the issue of employees who have not established an HSA by the end of the calendar year.

On June 1, 2007, proposed regulations (REG–143797–06), were published in the **Federal Register** (72 FR 30501) addressing the reserved issue and one additional issue concerning the acceleration of employer contributions. One written public comment on the proposed regulations was received, which supported the proposed regulations. These final regulations adopt the provisions of the proposed regulations without substantive revision.

Explanation of Provisions and Summary of Comments

Employee Has Not Established HSA by December 31

The proposed and final regulations provide a means for employers to comply with the comparability requirements with respect to employees who have not established an HSA by December 31, as well as with respect to employees who may have established an HSA but not notified the employer of that fact. The proposed and final regulations provide that, in order to comply with the comparability rules for a calendar year with respect to such employees, the employer must comply with a notice requirement and a contribution requirement. In order to comply with the notice requirement, the employer must provide all such employees, by January 15 of the following calendar year, written notice

that each eligible employee who, by the last day of February, both establishes an HSA and notifies the employer that he or she has established the HSA will receive a comparable contribution to the HSA. For each such eligible employee who establishes an HSA and so notifies the employer by the end of February, the employer must contribute to the HSA by April 15 comparable amounts (taking into account each month that the employee was a comparable participating employee) plus reasonable interest. The notice may be delivered electronically. The proposed and final regulations provide sample language that employers may use as a basis in preparing their own notices. The only comment received was in support of this new rule and the model notice.

Acceleration of Employer Contributions

The proposed and final regulations also address a second issue relating to acceleration of contributions. They provide that, for any calendar year, an employer may accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred during the calendar year qualified medical expenses exceeding the employer's cumulative HSA contributions at that time. If an employer accelerates contributions for this reason, these contributions must be available on an equal and uniform basis to all eligible employees throughout the calendar year and employers must establish reasonable uniform methods and requirements for acceleration of contributions and the determination of medical expenses. An employer is not required to contribute reasonable interest on either accelerated or non-accelerated HSA contributions. But see Q & A–6 and Q & A–12 in § 54.4980G–4 for when reasonable interest must be paid. The one comment received supported this new provision allowing employers to accelerate contributions.

Other Issues

These final regulations concern only section 4980G. Other statutes may impose additional requirements (for example, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (sections 9801–9803)).

Effective/Applicability Date

These regulations apply to employer contributions made for calendar years beginning on or after January 1, 2009. However, employers may rely on this guidance beginning on or after the date of publication of these final regulations in the **Federal Register**.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact the estimated burden associated with the information collection averages 15 minutes per respondent. Moreover, a model notice has been provided for employers who are subject to this collection of information. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Mireille Khoury, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

■ Accordingly, 26 CFR part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1**. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 54.4980G–0 [Amended]

■ **Par. 2.** Section 54.4980G–0 is amended by adding entries for 54.4980G–4 Q & A–14, Q & A–15 and Q & A–16 to read as follows:

§ 54.4980G–0 Table of contents.

* * * * *

§ 54.4980G–4 Calculating comparable contributions.

* * * * *

Q–14: How does an employer comply with the comparability rules if an employee has not established an HSA by December 31st?

Q–15: For any calendar year, may an employer accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses (as defined in section 223(d)(2)) exceeding the employer's cumulative HSA contributions at that time?

Q–16: What is the effective date for the rules in Q & A–14 and Q & A–15 of this section?

■ **Par. 3**. Section 54.4980G–4 is amended by:

■ 1. Removing paragraph (b) and redesignating paragraph (c) as paragraph (b) in Q & A–6.

■ 2. Adding Q & A–14, Q & A–15 and Q & A–16.

The additions read as follows:

§ 54.4980G–4 Calculating comparable contributions.

* * * * *

Q–14: Does an employer fail to satisfy the comparability rules for a calendar year if the employer fails to make contributions with respect to eligible employees because the employee has not established an HSA or because the employer does not know that the employee has established an HSA?

A–14: (a) *In general.* An employer will not fail to satisfy the comparability rules for a calendar year (Year 1) merely because the employer fails to make contributions with respect to an eligible employee because the employee has not established an HSA or because the employer does not know that the employee has established an HSA, if—

(1) The employer provides timely written notice to all such eligible employees that it will make comparable contributions for Year 1 for eligible employees who, by the last day of February of the following calendar year (Year 2), both establish an HSA and notify the employer (in accordance with a procedure specified in the notice) that they have established an HSA; and

(2) For each such eligible employee who establishes an HSA and so notifies the employer on or before the last day of February of Year 2, the employer contributes to the HSA for Year 1 comparable amounts (taking into account each month that the employee was a comparable participating employee) plus reasonable interest by April 15th of Year 2.

(b) *Notice.* The notice described in paragraph (a) of this Q & A–14 must be provided to each eligible employee who has not established an HSA by December 31 of Year 1 or if the employer does not know if the employee established an HSA. The

employer may provide the notice to other employees as well. However, if an employee has earlier notified the employer that he or she has established an HSA, or if the employer has previously made contributions to that employee's HSA, the employer may not condition making comparable contributions on receipt of any additional notice from that employee. For each calendar year, a notice is deemed to be timely if the employer provides the notice no earlier than 90 days before the first HSA employer contribution for that calendar year and no later than January 15 of the following calendar year.

(c) *Model notice.* Employers may use the following sample language as a basis in preparing their own notices.

Notice to Employees Regarding Employer Contributions to HSAs:

This notice explains how you may be eligible to receive contributions from [employer] if you are covered by a High Deductible Health Plan (HDHP). [Employer] provides contributions to the Health Savings Account (HSA) of each employee who is [insert employer's eligibility requirements for HSA contributions] (''eligible employee''). If you are an eligible employee, you must do the following in order to receive an employer contribution:

(1) Establish an HSA on or before the last day in February of [insert year after the year for which the contribution is being made] and;

(2) Notify [insert name and contact information for appropriate person to be contacted] of your HSA account information on or before the last day in February of [insert year after year for which the contribution is being made]. [Specify the HSA account information that the employee must provide (e.g., account number, name and address of trustee or custodian, etc.) and the method by which the employee must provide this account information (e.g., in writing, by e-mail, on a certain form, etc.)].

If you establish your HSA on or before the last day of February in [insert year after year for which the contribution is being made] and notify [employer] of your HSA account information, you will receive your HSA contributions, plus reasonable interest, for [insert year for which contribution is being made] by April 15 of [insert year after year for which contribution is being made]. If, however, you do not establish your HSA or you do not notify us of your HSA account information by the deadline, then we are not required to make any contributions to your HSA for [insert applicable year]. You may notify us that you have established an HSA by sending an [e-mail or] a written notice to [insert name, title and, if applicable, e-mail address]. If you have any questions about this notice, you can contact [insert name and title] at [insert telephone number or other contact information].

(e) *Electronic delivery.* An employer may furnish the notice required under this section electronically in accordance with § 1.401(a)-21 of this chapter.

(f) *Examples.* The following examples illustrate the rules in this Q & A–14:

Example 1. In a calendar year, Employer Q contributes to the HSAs of current employees who are eligible individuals covered under any HDHP. For the 2009 calendar year, Employer Q contributes $50 per month on the first day of each month, beginning January 1st, to the HSA of each employee who is an eligible employee on that date. For the 2009 calendar year, Employer Q provides written notice satisfying the content requirements of this Q & A–14 on October 16, 2008 to all employees regarding the availability of HSA contributions for eligible employees. For eligible employees who are hired after October 16, 2008, Employer Q provides such a notice no later than January 15, 2010. Employer Q's notice satisfies the notice timing requirements in paragraph (a)(1) of this Q & A–14.

Example 2. Employer R's written cafeteria plan permits employees to elect to make pre-tax salary reduction contributions to their HSAs. Employees making this election have the right to receive cash or other taxable benefits in lieu of their HSA pre-tax contribution. Employer R automatically contributes a non-elective matching contribution to the HSA of each employee who makes a pre-tax HSA contribution. Because Employer R's HSA contributions are made through the cafeteria plan, the comparability requirements do not apply to the HSA contributions made by Employer R. Consequently, Employer R is not required to provide written notice to its employees regarding the availability of this matching HSA contribution. See Q & A–1 in § 54.4980G–5 for treatment of HSA contributions made through a cafeteria plan.

Example 3. In a calendar year, Employer S maintains an HDHP and only contributes to the HSAs of eligible employees who elect coverage under its HDHP. For the 2009 calendar year, Employer S employs ten eligible employees and all ten employees have elected coverage under Employer S's HDHP and have established HSAs. For the 2009 calendar year, Employer S makes comparable contributions to the HSAs of all ten employees. Employer S satisfies the comparability rules. Thus, Employer S is not required to provide written notice to its employees regarding the availability of HSA contributions for eligible employees.

Example 4. In a calendar year, Employer T contributes to the HSAs of current full-time employees with family coverage under any HDHP. For the 2009 calendar year, Employer T provides timely written notice satisfying the content requirements of this section to all employees regardless of HDHP coverage. Employer T makes identical monthly contributions to all eligible employees (meaning full time employees with family HDHP coverage) that establish HSAs. Employer T contributes comparable amounts (taking into account each month that the employee was a comparable participating employee) plus reasonable interest to the HSAs of the eligible employees that establish HSAs and provide the necessary information after the end of the year but on or before the last day of February, 2010. Employer T makes no contribution to the HSAs of employees that do not establish an HSA or that do not provide the necessary information on or before the last day of February, 2010. Employer T satisfies the comparability requirements.

Example 5. For the 2009 calendar year, Employer V contributes to the HSAs of current full time employees with family coverage under any HDHP. Employer V has 500 current full time employees. As of the date for Employer V's first HSA contribution for the 2009 calendar year, 450 eligible employees have established HSAs. Employer V provides timely written notice satisfying the content requirements of this section only to those 50 eligible employees who have not established HSAs. Employer V makes identical quarterly contributions to the 450 eligible employees who established HSAs. By April 15, 2010, Employer V contributes comparable amounts to the other eligible employees who establish HSAs and provide the necessary information on or before the last day of February, 2010. Employer V makes no contribution to the HSAs of eligible employees that do not establish an HSA or that do not provide the necessary information on or before the last day of February, 2010. Employer V satisfies the comparability rules.

Q–15: For any calendar year, may an employer accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses (as defined in section 223(d)(2)) exceeding the employer's cumulative HSA contributions at that time?

A–15: (a) *In general.* Yes. For any calendar year, an employer may accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses exceeding the employer's cumulative HSA contributions at that time. If an employer accelerates contributions to the HSA of any such eligible employee, all accelerated contributions must be available throughout the calendar year on an equal and uniform basis to all such eligible employees. Employers must establish reasonable uniform methods and requirements for accelerated contributions and the determination of medical expenses.

(b) *Satisfying comparability.* An employer that accelerates contributions to the HSAs of its employees will not fail to satisfy the comparability rules because employees who incur qualifying medical expenses exceeding the employer's cumulative HSA contributions at that time have received more contributions in a given period than comparable employees who do not incur such expenses, provided that all

comparable employees receive the same amount or the same percentage for the calendar year. Also, an employer that accelerates contributions to the HSAs of its employees will not fail to satisfy the comparability rules because an employee who terminates employment prior to the end of the calendar year has received more contributions on a monthly basis than employees who work the entire calendar year. An employer is not required to contribute reasonable interest on either accelerated or non-accelerated HSA contributions. But see Q & A–6 and Q & A–12 of this section for when reasonable interest must be paid.

Q–16: What is the effective date for the rules in Q & A–14 and Q & A–15 of this section?

A–16: These regulations apply to employer contributions made for calendar years beginning on or after January 1, 2009.

Approved: April 10, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–8214 Filed 4–16–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0114]

RIN 1625–AA87

Security Zone; Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of the Anacostia River in order to safeguard high-ranking public officials from terrorist acts and incidents. This action is necessary to ensure the safety of persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective from 7:30 a.m. through 2 p.m. on April 17, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0114 and are available online at *http://www.regulations.gov.* This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 7, 2008, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Anacostia River, Washington, DC'' in the **Federal Register** (73 FR 12318). We received one letter, with an attached photo, commenting on the proposed rule. Based on this comment, no changes were made to the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It would be contrary to public interest to delay the effective date of this rule.

The Department of Homeland Security designated the 2008 Papal Visits in the United States as Special Events Awareness Report (SEAR) Level II. The Coast Guard is establishing this security zone to support the United States Secret Service, the designated lead federal agency for the events, in their efforts to coordinate security operations and establish a secure environment for this highly visible and publicized event.

The measures contemplated by the rule are intended to protect the public and high-ranking public officials by preventing waterborne acts of terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts.

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Captain of the Port Baltimore is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact of a terrorist attack against a large number of participants, and the surrounding waterfront area and communities, in Washington, DC. This temporary security zone applies to all waters of the Anacostia River, from shoreline to shoreline, from a line connecting the following points, beginning at 38°51′50″ N, 077°00′41″ W thence to 38°51′44″ N, 077°00′26″ W, upstream to the Officer Kevin J. Welsh Memorial (11th Street) Bridge. Although interference with normal port operations will be kept to the minimum considered necessary to ensure the security of life and property on the navigable waters immediately before, during, and after the scheduled event, this zone will help the Coast Guard to prevent vessels or persons from bypassing security measures for the event established and engaging in terrorist actions against a large number of participants during the highly-publicized event.

Discussion of Comments and Changes

The Coast Guard received one comment in response to the NPRM. No

public meeting was requested and none was held.

The commenter, the developer of a piece of equipment that can be pre-attached to any standard fire hydrant, stated that such an item could quickly be activated to decontaminate or cool many people by providing ''a ring of potential showers around the stadium while the Pope is there.''

We did not make any changes from the proposed rule which involves a security zone on the Anacostia River based on this comment. We did, however, revise paragraph (b)(1) of the regulatory text to reflect what we stated in the preamble of the NPRM, that except for Public vessels and vessels at berth, mooring or at anchor, all vessels in this zone must depart the security zone.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

There is little seasonal vessel traffic associated with recreational boating and commercial fishing during the effective period, and vessels may seek permission from the Captain of the Port Baltimore to enter and transit the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit, operate or anchor in a portion of the Anacostia River, from shoreline to shoreline, from a line connecting the following points, beginning at 38°51′50″ N, 077°00′41″ W thence to 38°51′44″ N, 077°00′26″ W, upstream to the Officer Kevin J. Welsh Memorial (11th Street) Bridge, from 7:30 a.m. through 2 p.m. on April 17, 2008. Although the security zone applies to the entire width of the river, this zone will not have a significant economic impact on a substantial number of small entities due to a lack of seasonal vessel traffic associated with recreational boating and commercial fishing during the effective period. Also, before the effective period, we would issue maritime advisories widely available to users of the Anacostia River, and vessels may seek permission from the Captain of the Port Baltimore to enter and transit the security zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction, from further environmental documentation. This rule establishes a security zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–012 to read as follows:

§ 165.T08–012 Security Zone; Anacostia River, Washington, DC.

(a) *Location.* The following area is a security zone: All waters of the Anacostia River, from shoreline to shoreline, from a line connecting the following points, beginning at 38°51′50″ N, 077°00′41″ W thence to 38°51′44″ N, 077°00′26″ W, upstream to the Officer Kevin J. Welsh Memorial (11th Street) Bridge. These coordinates are based upon North American Datum 1983.

(b) *Regulations.* (1) Entry into the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore. Except for Public vessels and vessels at berth, mooring or at anchor, all vessels in this zone must depart the security zone.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 410–576–2693 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by Federal, State and local agencies.

(c) *Effective period.* This section is effective from 7:30 a.m. through 2 p.m. on April 17, 2008.

Dated: April 10, 2008.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 08–1146 Filed 4–15–08; 9:31 am]

BILLING CODE 4910–15–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–38

[FMR Amendment 2008–05; FMR Case 2007–102–2; Docket FMR–2008–0001; Sequence 2]

RIN 3090–AI33

Federal Management Regulation; FMR Case 2007–102–2, Sale of Personal Property-Federal Asset Sales (eFAS) Sales Centers

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) by adding provisions for the sale of personal property through Federal Asset Sales (eFAS) Sales Centers.

DATES: *Effective Date:* This rule is effective on April 17, 2008.

Compliance Date: For agencies already tasked by the Office of Management and Budget (OMB) to meet e-Government milestones related to this eFAS initiative, you must comply by April 17, 2008.

All other agencies must comply with the e-Government milestones identified in section 102–38.360 by July 17, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Holcombe, Office of Governmentwide Policy, Personal Property Management Policy, at (202) 501–3828, or e-mail at *robert.holcombe@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FMR Amendment 2008–05, FMR Case 2007–102–2.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on April 3, 2007 (72 FR 15854) soliciting comments on proposed changes to 41 CFR part 102–38. Nineteen individuals, agencies, or entities provided comments. Many of those providing comments had multiple statements, questions, or concerns. After reviewing the comments, and recognizing that the milestones listed in Subpart H were inconsistent with the eFAS e-Government milestones, that section is being revised to refer to the eFAS initiative milestones, which have been developed between the Office of Management and Budget, the eFAS Planning Office, and agency representatives over the past year. These milestones are available to the public via GSA's Web site at *http://www.gsa.gov/govsalesmilestones.*

The second major change from the proposed rule is to address comments from the public that there is a perception that this e-Government initiative will make agencies choose less effective sales solutions in order to migrate to an approved Sales Center (SC). Section 102–38.360 is rewritten to further emphasize that agencies should identify sales solutions which are more effective than those solutions offered by approved Sales Centers by submitting a waiver to the eFAS Planning Office. GSA foresees granting temporary waivers for agencies to use these more effective solutions until either the sales solutions are approved as Sales Centers, or the agency migrates to an approved Sales Center as quickly as practicable. It is not the intent of the eFAS initiative nor this regulation to make agencies migrate away from effective sales solutions. The intent is to identify the best sales solutions for Federal assets, and to make these assets visible to the

public so that prospective purchasers can find and buy Federal assets for sale through one centralized Internet portal.

To clarify, the FMR has provisions for granting deviations to regulations; however, this regulation will allow for waivers outside the deviation process in FMR 102–2.60 through 102–2.110. Waivers will be approved by the eFAS Planning Office upon presentation of a business case showing that complying with an eFAS milestone is either impracticable or inefficient.

This final rule recognizes different migration dates for agencies previously tasked to comply with OMB e-Government milestones related to this eFAS initiative and all other agencies. For agencies not tasked by OMB to meet e-Government milestones related to this eFAS initiative, the agencies' current sales solution(s) are considered approved eFAS Sales Center(s) until the ''Compliance Date'' of this final rule.

The following is a summary of comments on the proposed rule, and how they are addressed in this final rule.

Comment 1. One specific comment questioned the need to have ''a duly authorized agency official'' sell Federal personal property assets. Several other comments alluded to this sales function when comparing Federal and commercial sales.

Response: Federal asset sales policies have always required a Government representative approving each sale. This is to protect the Government's interest and because the transfer of title to personal property is an inherently governmental function. There are three main reasons for this requirement: The Federal official approving the sale is (a) obligating the Government to a course of action (committing the expenditure of resources) for every sale; (b) obligating the Government to the sales contract, including addressing sales disputes should issues arise, and the transfer of title to the personal property sold; and (c) verifying that the winning bidder(s) are not excluded from engaging in business with the Federal Government. Finally, most of these sales-related functions are within the realm of activities which are ''inherently governmental'' according to Office of Federal Procurement Policy (OFPP) Letter 92–1.

There was no change made to this final rule as a result of this comment.

Comment 2. Eleven comments specifically addressed the concern that the Government was competing with the private sector in the sale of Federal assets, and/or that the Government was impacting commercial sales or sales solutions. Other comments alluded to this concern.

Response: As mentioned in *Comment 1.,* the sale of Federal assets cannot be compared to commercial sales in every aspect. In addition, under eFAS, private sector entities are the sales mechanism for many sales currently conducted by the eFAS-approved SCs. Finally, and perhaps most importantly, agencies that currently use or that are able to identify private sector entities which can demonstrate a more effective sales solution than the eFAS-approved SCs are invited and encouraged to submit a waiver request so that, if the waiver is approved, that agency and other agencies, in the future, may utilize the services of these private sector sales solutions and be better stewards of the Government's interests. GSA plans to approve waivers where there is a business case showing when an eFAS milestone is either impracticable or inefficient. The waiver process is discussed under *Comment 5.* For background: GSA is not able to identify all activities selling Federal personal property; therefore, GSA is not able to identify those sales activities which are more effective than the approved SCs. All agencies were asked to nominate effective sales solutions for consideration as SCs in 2005. This request for SC nominations was repeated in 2006. Only the eFAS-approved SCs were nominated by agencies as effective providers of sales solutions. No bid by an agency to become an SC using their current or proposed sales solution(s) was refused, regardless of whether the solution utilized private sector support, governmental support, or a mix of private and governmental activities. There was no change made in this final rule as a result of these comments.

Comment 3. Related to *Comment 2.,* there were two comments requesting that only private sector entities sell Federal assets.

Response: As in the response to *Comment 2.,* there is no barrier to private sector participation in the sales of Federal personal property. Many private sector entities already participate with the eFAS-approved SCs, and agencies are invited to identify new solutions which are more effective than those approved by the eFAS initiative. See the waiver process comments in *Comment 5.* There was no change made to this final rule as a result of these comments.

Comment 4. Nine comments expressed concern that this final rule will increase the cost of Government sales; either because the SCs will charge higher prices because they are not as cost-effective as private sector sellers, or because they are not incentivized to maximize profits.

Response: Many private sector entities already participate with the eFAS-approved SCs, and agencies are invited to identify new solutions which are more effective than those approved by the eFAS initiative. See the waiver process comments in *Comment 5.* There was no change made to the final rule as a result of these comments.

Comment 5. Six comments related to the FMR deviation or waiver process, either suggesting that Federal agencies be able to opt out of the provisions of this final rule or stating that the process of obtaining a waiver to the provisions of this final rule was not provided.

Response: The eFAS initiative is established to utilize and leverage the services of the best sellers of Federal assets. It would be contrary to the eFAS initiative to allow agencies to choose sales solutions that are less effective sellers than those identified by the selling agencies or the eFAS Executive Steering Committee (ESC). The general provisions for requesting a deviation to the regulation remain in section 102–38.30. However, for waivers to the eFAS milestones (such as migrating to an ESC-approved SC), the agency must request a waiver in accordance with section 102–38.360. Waivers will be approved by the eFAS Planning Office upon presentation of a business case showing that complying with an eFAS milestone is either impracticable or inefficient.

In summary, for this final rule, there is a waiver process for the eFAS milestones (following policy in section 102–38.360) and a deviation process to the regulation that is for other than eFAS milestones (following policy in section 102–38.30). Section 102–38.360 was modified to address eFAS Planning Office waivers to the eFAS milestones.

Comment 6. Two comments suggested that the process for an agency to become an eFAS-approved SC was not identified.

Response: The process for an agency to become an eFAS-approved SC is identified in section 102–38.35 under the definition of a ''Sales Center.'' There was no change made to the final rule as a result of these comments.

Comment 7. One comment suggested that all new SCs be approved by the Office of Management and Budget (OMB).

Response: OMB has approved all SCs and will approve the designation of any future SCs. There was no change made to this final rule as a result of this comment.

Comment 8. One comment suggested that all SCs sit on a board which

governs the eFAS process, and each SC have an equal vote.

Response: All agencies identified as Business Reference Model agencies by OMB are invited to participate in the eFAS ESC. The voting members were identified by OMB at the beginning of the eFAS initiative and include SC agencies and non-SC agencies. The input of the non-SC agencies is important to obtain the perspective of the customer agencies. There was no change made to this final rule as a result of this comment.

Comment 9. Three responses contend that the proposed rule is in violation of Executive Order 12866 as it will harm many small businesses.

Response: Executive Order 12866 specifically excludes a regulation limited to rules governing agency management practices (such as this) from the definition of a significant regulatory action (section 3(d)). There was no change made to this final rule as a result of these comments.

Comment 10. One question asked if GSA will be the only seller of surplus property held by the State Agencies for Surplus Property (SASPs) which is not donated.

Response: As the undonated property held by the SASPs is still Federal property, it would fall under the rules of this final rule and must be sold through an SC such as GSA, if not disposed of in accordance with FMR 102–37.305. There was no change made to this final rule as a result of this comment.

Comment 11. Two comments had a concern that the Government is inappropriately using private sector business models or will violate patent laws by using Government developed systems.

Response: The Government must ensure that it does not violate protected processes or tools. There was no change made to this final rule as a result of these comments.

Comment 12. One comment had a concern that the Government will have to invest in the development of an SC.

Response: The SCs were nominated, approved, and selected because they have already shown expertise in selling Federal assets and have a plan to be able to absorb an increase in sales volume if more assets are sold through the SC. This increase in SC capacity will not be funded by the Government. There was no change made to this final rule as a result of this comment.

Comment 13. One comment expressed a concern that only GSA determines who sells property under the eFAS initiative.

Response: As indicated under *Comment 7.,* OMB makes the final decision as to which agencies become SCs, and therefore who sells Federal property. Prior to OMB review, the eFAS ESC reviews and approves the recommendations of the ESC selection panel. GSA has only one vote on the eFAS ESC. There was no change made to this final rule as a result of this comment.

Comment 14. One comment had a concern that the eFAS activity is not transparent and in accordance with principles of the Federal Acquisition Regulation.

Response: This is not an acquisition for sales services—the eFAS initiative involves the selection of agencies to sell property belonging to the holding agency (and possibly that of other agencies). Nevertheless, the process of approving and selecting SCs and making significant decisions is transparent to the representatives on the eFAS ESC, and those who represent the interests of all the agencies selling assets. Finally, major decisions are fully explained and documented to OMB. There was no change made to this final rule as a result of this comment.

Comment 15. Two comments had a concern that this would violate OMB Circular A–76 as the Circular states that a competition should be performed before Government personnel perform an activity performed by the private sector.

Response: As explained under *Comment 1.,* these functions are clearly within the scope of activities which are ''inherently governmental'' according to OFPP Letter 92–1, and, as such, do not need to be competed with commercial activities. There was no change made to this final rule as a result of these comments.

Comment 16. One comment suggested that the proposed rule violates 40 U.S.C. 573 in that ''the statute does not permit GSA to retain charges for running a Web site or collecting information not part of the sales process.''

Response: Administering the GovSales sales Web site is a cost associated with sales of property which GSA is allowed to do under 40 U.S.C. 573. The retention of proceeds cited in the proposed FMR 102–38.295(a) is what all agencies (not just GSA) can retain to mitigate costs in accordance with 40 U.S.C. 571. There was no change made to this final rule as a result of this comment.

Comment 17. One comment observed that the vendor has attempted to update pricing with GSA for years with no progress.

Response: GSA's contract pricing was not addressed in the proposed rule, and is not addressed in the final rule. The comment likely refers to a vendor's pricing on the GSA schedules. The rates charged by any eFAS SC to sell assets for another agency is established by an agreement between the eFAS SC and the holding agency. There was no change made to this final rule as a result of this comment.

Comment 18. One comment asked ''How will sales work for a private citizen that does not have access to the internet?''

Response: In addition to online sales, there will continue to be offline sales. Also, with the continuing spread of technology, more people will have access to the Internet through their community, work, or friends/family. There was no change made to this final rule as a result of this comment.

Comment 19. One comment expressed the expectation that GSA will keep costs to the absolute minimum since agencies no longer have approved SC options.

Response: GSA agrees with this comment. The eFAS initiative and GSA will continually seek to find ways to ensure that GSA rates (as well as the rates charged by all eFAS SCs) are competitive. Also, agencies that find a sales process that provides a better value should make that known to the eFAS Planning Office. There was no change made to this final rule as a result of this comment.

Comment 20. One comment suggested that Real Property sales should be left to local brokers.

Response: The proposed rule and this final rule only address sales of Federal personal property. There was no change made to this final rule as a result of this comment.

Comment 21. One question asked if this final rule would increase the amount of property returned by an SC to the agency because the property could not be sold or the sale was not conducted because it was not feasible.

Response: The eFAS initiative does not foresee any degradation of SC service as a result of this final rule. To the contrary, through agencies identifying and using more effective sales solutions, the initiative expects that service and effectiveness will improve over time. There was no change made to this final rule as a result of this comment.

The following comments were accepted and are incorporated in this final rule.

Comment 22. One comment was that the policy should be clearer regarding what agencies should do with property that is scrap, or property that the SCs

could not sell, or that was otherwise eligible for disposal under the abandonment/destruction authorities of section 102–36.305 and following subparts.

Response: Agreed. Provisions have been added to this final rule to address these situations (sections 102–38.365 and 102–38.370).

Comment 23. Three comments observed that this final rule could not supersede their agency's authority given to them by another law.

Response: Agreed. It will be clear in section 102–38.20 that agencies with sales authorities outside title 40 of the United States Code are exempt from following this final rule.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 102–38

Government property management, Surplus Government property.

Dated: January 10, 2008.

Lurita Doan,

Administrator of General Services.

Editorial Note: This document was received at the Office of the Federal Register on April 14, 2008.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–38 as set forth below:

PART 102–38—SALE OF PERSONAL PROPERTY

■ 1. The authority citation for part 102–38 continues to read as follows:

Authority: 40 U.S.C. 545 and 40 U.S.C. 121(c).

■ 2. Revise § 102–38.20 to read as follows:

§ 102–38.20 Must an executive agency follow the regulations of this part when selling all personal property?

Generally, yes, an executive agency must follow the regulations of this part when selling all personal property; however—

(a) Materials acquired for the national stockpile or supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093) are excepted from this part;

(b) The Maritime Administration, Department of Transportation, has jurisdiction over the disposal of vessels of 1,500 gross tons or more and determined by the Secretary to be merchant vessels or capable of conversion to merchant use;

(c) Sales made by the Secretary of Defense pursuant to 10 U.S.C. 2576 (Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies) are exempt from these provisions;

(d) Foreign excess personal property is exempt from these provisions; and

(e) Agency sales procedures which are mandated or authorized under laws other than Title 40 United States Code are exempt from this part.

§ 102–38.25 [Amended]

■ 3. Amend § 102–38.25 by removing the words ''holding agency'' and adding the words ''Sales Center'' in its place.

■ 4. Revise § 102–38.30 to read as follows:

§ 102–38.30 How does an executive agency request a deviation from the provisions of this part?

Refer to §§ 102–2.60 through 102–2.110 of this chapter for information on how to obtain a deviation from this part. However, waivers which are distinct from the standard deviation process and specific to the requirements of the Federal Asset Sales (eFAS) initiative milestones (see Subpart H of this part) are addressed in § 102–38.360.

■ 5. Amend § 102–38.35 by alphabetically adding the definitions ''Federal Asset Sales (eFAS)'', ''Federal Asset Sales Planning Office (eFAS Planning Office)'', ''Holding Agency'', ''Migration Plan'', and ''Sales Center (SC)'' to read as follows:

§ 102–38.35 What definitions apply to this part?

* * * * *

Federal Asset Sales (eFAS) refers to the e-Government initiative to improve the way the Federal Government manages and sells its real and personal property assets. Under this initiative, only an agency designated as a Sales Center (SC) may sell Federal property, unless a waiver has been granted by the *eFAS* Planning Office in accordance with § 102–38.360. The *eFAS* initiative is governed and given direction by the *eFAS* Executive Steering Committee (ESC), with GSA as the managing partner agency.

Federal Asset Sales Planning Office (eFAS Planning Office) refers to the office within GSA assigned responsibility for managing the eFAS initiative.

Holding Agency refers to the agency in possession of personal property eligible for sale under this part.

* * * * *

Migration Plan refers to the document a holding agency prepares to summarize its choice of SC(s) and its plan for migrating agency sales to the SC(s). The format for this document is determined by the eFAS ESC.

* * * * *

Sales Center (SC) means an agency that has been nominated, designated, and approved by the eFAS ESC and the Office of Management and Budget (OMB) as an official sales solution for Federal property. The criteria for becoming an *SC,* the selection process, and the ongoing *SC* requirements for posting property for sale to the eFAS portal and reporting sales activity and performance data are established by the eFAS ESC and can be obtained from the eFAS Planning Office at GSA. The eFAS Planning Office may be contacted via e-mail at *FASPlanningOffice@gsa.gov. SCs* may utilize (and should consider) private sector entities as well as Government activities and are expected to provide exemplary asset management solutions in one or more of the following areas: on-line sales; off-line sales; and sales-related value added services. *SCs* will enter into agreements with holding agencies to sell property belonging to these holding agencies. A holding agency may employ the services of multiple *SCs* to maximize efficiencies.

* * * * *

■ 6. Revise § 102–38.40 to read as follows:

§ 102–38.40 Who may sell personal property?

An executive agency may sell personal property (including on behalf of another agency when so requested) only if it is a designated Sales Center (SC), or if the agency has received a waiver from the eFAS Planning Office. An SC may engage contractor support to

sell personal property. Only a duly authorized agency official may execute the sale award documents and bind the United States.

■ 7. Amend § 102–38.45 by revising the heading and introductory paragraph to read as follows:

§ 102–38.45 What are an executive agency's responsibilities in selling personal property?

An executive agency's responsibilities in selling personal property are to—

* * * * *

■ 8. Amend § 102–38.50 by revising the heading and introductory paragraph to read as follows:

§ 102–38.50 What must we do when an executive agency suspects violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property?

If an executive agency suspects violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property, the agency must—

* * * * *

■ 9. Revise § 102–38.60 to read as follows:

§ 102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

The holding agency is responsible for the care and handling costs of the personal property until it is removed by the buyer, the buyer's designee, or an SC. The holding agency may request the SC to perform care and handling services in accordance with their agreement. When specified in the terms and conditions of sale, the SC may charge the buyer costs for storage when the buyer is delinquent in removing the property. The amount so charged may only be retained by the holding agency performing the care and handling in accordance with § 102–38.295.

§ 102–38.65 [Amended]

■ 10. Amend § 102–38.65 in the heading, by removing the words ''we are'' and adding the words ''we are or the holding agency is'' in its place; and in the second sentence by adding the words ''or the holding agency'' after the word ''you''.

§ 102–38.70 [Amended]

■ 11. Amend § 102–38.70 in the heading, by removing the word ''we'' and adding the words ''the holding agency'' in its place; and in paragraph (a), by removing the word ''you'' and adding the words ''the holding agency'' in its place.

■ 12. Amend § 102–38.75 by revising the introductory text to paragraph (a), and paragraph (a)(12) to read as follows:

§ 102–38.75 How may we sell personal property?

(a) You will sell personal property upon such terms and conditions as the head of your agency or designee deems proper to promote the fairness, openness, and timeliness necessary for the sale to be conducted in a manner most advantageous to the Government. When you are selling property on behalf of another agency, you must consult with the holding agency to determine any special or unique sales terms and conditions. You must also document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

* * * * *

(12) Requirements to comply with applicable laws and regulations. 41 CFR Part 101–42 contains useful guidance addressing many of these requirements. You should also contact your agency's Office of General Counsel or environmental office to identify applicable Federal, State, or local environmental laws and regulations.

* * * * *

■ 13. Revise § 102–38.120 to read as follows:

§ 102–38.120 When may we conduct negotiated sales of personal property at fixed prices (fixed price sale)?

You may conduct negotiated sales of personal property at fixed prices (fixed price sale) under this section when:

(a) The items are authorized to be sold at fixed price by the Administrator of General Services, as reflected in GSA Bulletin FMR B–10 (located at *http://www.gsa.gov/fmrbulletin*). You may also contact the GSA Office of Travel, Transportation, and Asset Management (MT) at the address listed in § 102–38.115 to determine which items are on this list of authorized items;

(b) The head of your agency, or designee, determines in writing that such sales serve the best interest of the Government. When you are selling property on behalf of a holding agency, you must consult with the holding agency in determining whether a fixed price sale meets this criterion; and

(c) You must publicize such sales to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You or the holding agency may also establish additional terms and conditions that must be met by the successful purchaser in accordance with § 102–38.75.

■ 14. Revise § 102–38.295 to read as follows:

§ 102–38.295 May we retain sales proceeds?

(a) You may retain that portion of the sales proceeds, in accordance with your agreement with the holding agency, equal to your direct costs and reasonably related indirect costs (including your share of the Governmentwide costs to support the eFAS Internet portal and Governmentwide reporting requirements) incurred in selling personal property.

(b) A holding agency may retain that portion of the sales proceeds equal to its costs of care and handling directly related to the sale of personal property by the SC (*e.g.*, shipment to the SC, storage pending sale, and inspection by prospective buyers).

(c) After accounting for amounts retained under paragraphs (a) and (b) of this section, as applicable, a holding agency may retain the balance of proceeds from the sale of its agency's personal property when—

(1) It has the statutory authority to retain all proceeds from sales of personal property;

(2) The property sold was acquired with non-appropriated funds as defined in § 102–36.40 of this subchapter B;

(3) The property sold was surplus Government property that was in the custody of a contractor or subcontractor, and the contract or subcontract provisions authorize the proceeds of sale to be credited to the price or cost of the contract or subcontract;

(4) The property was sold to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this subchapter B; or

(5) The property sold was related to waste prevention and recycling programs, under the authority of Section 607 of Public Law 107–67 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 107–67, 115 Stat. 514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

■ 15. Amend § 102–38.300 by revising the section heading to read as follows:

§ 102–38.300 What happens to sales proceeds that neither we nor the holding agency are authorized to retain, or that are unused?

* * * * *

■ 16. Add Subpart H, consisting of §§ 102–38.360, 102–38.365, and 102–38.370 to read as follows:

Subpart H—Implementation of the Federal Asset Sales Program

§ 102–38.360 What must an executive agency do to implement the eFAS program?

(a) An executive agency must review the effectiveness of all sales solutions, and compare them to the effectiveness (*e.g.*, cost, level of service, and value added services) of the eFAS SCs. Agencies should give full consideration to sales solutions utilizing private sector entities, including small businesses, that are more effective than the solutions provided by any eFAS-approved SC. If the agency decides that there are more effective sales solutions than those solutions offered by the eFAS SCs, the agency must request a waiver from the milestones using the procedures and forms provided by the eFAS Planning Office. Waivers will be approved by the eFAS Planning Office upon presentation of a business case showing that complying with an eFAS milestone is either impracticable or inefficient. Waiver approval will be coordinated with GSA's Office of Travel, Transportation, and Asset Management. Contact the eFAS Planning Office at *FASPlanningOffice@gsa.gov* to obtain these procedures and forms.

(b) An approved waiver for meeting one of the eFAS milestones does not automatically waive all milestone requirements. For example, if an agency receives a waiver to the migration milestone, the agency must still (1) post asset information on the eFAS Web site and (2) provide post-sales data to the eFAS Planning Office in accordance with the content and format requirements developed by the eFAS ESC, unless waivers to these milestones are also requested and approved. Waivers to the eFAS milestones will not be permanent. Upon expiration of the waiver to the migration milestone, an agency must either migrate to an approved SC, or serve as a fully functioning SC, as soon as practicable. See the definition of a ''Sales Center'' at § 102–38.35 for an overview of how agency sales solutions become SCs.

(c) An agency which receives a waiver from the eFAS milestones must comply with subparts A through G of this part as if it were an SC.

(d) An executive agency must comply with all eFAS milestones approved by OMB including those regarding the completion of an agency-wide sales migration plan, the reporting of pre- and post-sales data, and the migration to approved SCs unless a waiver has been submitted by the agency and approved by the eFAS Planning Office. The eFAS milestones are available for viewing at *http://www.gsa.gov/govsalesmilestones.*

§ 102–38.365 Is a holding agency required to report property in ''scrap'' condition to its selected SC?

No. Property which has no value except for its basic material content (scrap material) may be disposed of by the holding agency by sale or as otherwise provided in § 102–38.70. However, the holding agency should consult the SC(s) selected by the holding agency as to the feasibility of selling the scrap material. Agencies selling scrap property under authority of this subpart are still required to report sales metrics in accordance with eFAS ESC-approved format and content.

§ 102–38.370 What does a holding agency do with property which cannot be sold by its SC?

All reasonable efforts must be afforded the SC to sell the property. If the property remains unsold after the time frame agreed to between the SC and the holding agency, the holding agency may dispose of the property by sale or as otherwise provided in § 102–38.70. The lack of public interest in buying the property is evidence that the sales proceeds would be minimal. Agencies selling property under authority of this subpart are still required to report sales metrics in accordance with eFAS ESC-approved format and content.

[FR Doc. E8–8314 Filed 4–16–08; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 423

[CMS–4133–CN]

RIN 0938–AP25

Medicare Program; Modification to the Weighting Methodology Used To Calculate the Low-Income Benchmark Amount; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final.

SUMMARY: This document corrects mathematical errors that appeared in the impact analysis accompanying the final rule that appeared in the **Federal Register** on April 3, 2008 entitled, ''Modification to the Weighting Methodology Used to Calculate the Low-Income Benchmark Amount.''

DATES: *Effective Date:* May 31, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Spitalnic, (410) 786–2328.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc.08–1088 of April 3, 2008 (73 FR 18176), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document printed in the **Federal Register** on April 3, 2008. Accordingly, the corrections are effective May 31, 2008.

II. Summary of Errors

This correction notice corrects the impact estimates shown in the preamble to the final rule, Medicare Program; Modification to the Weighting Methodology Used to Calculate the Low-Income Benchmark Amount (CMS–4133–F), which appeared in the **Federal Register** on April 3, 2008. That final rule introduced an improved weighting method in the calculation of the low-income benchmark premium amount under section 1860D–14(b)(2)(A)(ii) of the Social Security Act.

The impact estimates presented in the final rule were affected by a mathematical calculation error that resulted in an overestimate of the number of Medicare Part D enrollees affected by the final rule and a similar overestimate of the additional cost to Medicare under the new policy. This notice corrects the estimated reduction in the future number of low-income subsidy eligible beneficiaries who would have to be reassigned to a different Part D prescription drug benefit plan. The original estimate was 850,000, and the corrected number is 580,000. Further, the additional cost of the rule was originally estimated to total $1.68 billion for fiscal years 2009 through 2018, and the corrected estimated cost is $1.23 billion. The correction of these estimation errors has no effect on the policy adopted in the final rule, on the Part D low-income subsidy benchmarks previously determined for 2008, or on beneficiaries'' enrollment in Part D plans in 2008.

III. Correction of Errors

In FR Doc. 08–1088 of April 3, 2008 (73 FR 18176), make the following corrections:

1. On page 18178, in the second column, in the first full paragraph, in line 27, change the number ''850,000'' to ''580,000.''

2. On pages 18180 through 18182, section ''V. Regulatory Impact

Statement'' is deleted and is replaced in its entirety to read as follows:

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule allows CMS to calculate the low-income premium benchmark amounts by weighting the premium amounts by total LIS enrollment for each plan in order to reduce the number of reassignments compared to the current regulatory framework. We believe this final rule will lead to additional Federal costs of approximately $60 million for calendar year (CY) 2009. The CY 2009 cost of $60 million represents our best estimate of the cost of the final rule. Generally, our best estimates reflect an equal likelihood of being too high or too low. The estimated cost over the next 10 fiscal years (2009 through 2018) is $1.23 billion. The year-by-year impacts in millions of dollars are shown in Table 1 below. The $60 million estimate above is for CY 2009. The table below summarizes the fiscal year (FY) costs. Yearly growth is due to an estimated increase in the number of enrollees in future years and increasing drug trends that cause higher estimated bids in future years.

TABLE 1.—FEDERAL COSTS FOR FY 2009 THROUGH FY 2018

Fiscal year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2009–2018
Estimated Costs (in millions)	$50	$80	$90	$100	$110	$120	$140	$160	$180	$200	$1,230

This rule does reach the economic threshold of $100 million in the out-years and thus is considered a major rule, as outlined by Executive Order 12866.

This cost is due to increased Federal premium subsidy payments, which are the result of generally increasing the low-income benchmarks. The higher benchmarks allow a greater number of low-income beneficiaries to remain in their current plan, rather than reassigning them to a lower cost plan.

In each region, the low-income benchmark essentially functions as a ceiling for the Federal premium subsidy for low-income beneficiaries. That is, the Federal premium subsidy covers the full cost of the plan's basic Part D premium for a full-subsidy beneficiary, up to the low-income benchmark amount.

Weighting based on each plan's share of LIS enrollment generally is expected to increase the low-income benchmarks. We estimated that, in 2008, if the low-income benchmarks had been calculated based on LIS enrollment weighting (rather than based on total Part D enrollment weighting), the benchmarks would have been higher in 21 of the 34 PDP regions. Generally, the higher the low-income benchmarks, the lower the number of LIS reassignments. This is because, under the higher benchmarks, more PDPs are likely to have premiums that are equal to or less than the low-income benchmark and, as a result, will be fully covered by the premium subsidy. Low-income subsidy beneficiaries are able to remain in these PDPs and are not reassigned to other lower-premium PDPs.

We expect this rule will reduce the administrative costs for plan sponsors associated with the reassignment of LIS beneficiaries. These costs include the production of new member informational materials by the new plan, increased staffing of call centers to field beneficiary questions, and costs associated with implementing transition benefits for new enrollees.

Although there is no quantifiable monetary value to CMS to reducing reassignments, we feel this benefit is important as it will increase program stability and continuity of care. The rule supports pharmacy and formulary consistency for the beneficiary. Particularly in regions with high MA-PD penetration, this rule will reduce the year-to-year volatility in reassignments of LIS beneficiaries and will help avoid the disruption that is inherent any time a beneficiary is switched from one plan to another.

Based on the most recent bid results, we estimated that if the 2008 benchmarks had been calculated using LIS enrollment weighting, there would have been approximately 580,000 fewer reassignments than if the benchmarks had been calculated using total Part D enrollment weighting. Then we determined the impact of the revised benchmarks and reassignments on program payments throughout the projection period. We do not explicitly project reassignments in future years. The expectation is that the net effect of future reassignments will result in projected cost levels comparable to the results of the reassignments modeled on the most recent bid results.

The cost estimate assumes full enrollment weighting based on LIS enrollment for the calculations of the low-income benchmark premium amounts. The estimate was developed by applying this rule against the 2008 bids and this impact was projected throughout the forecast period. The estimate does not anticipate any change in bidding strategies or outcomes but does include the effect on the level of administrative costs plan sponsors will include in their bids to account for their expected number of LIS beneficiary reassignments.

The proposed rule estimated Federal savings of approximately $20 million per calendar year. However, the final rule estimates an additional $60 million in Federal costs for CY 2009. There are two reasons that the cost estimate has changed. First, the budget baseline has been updated since the issuance of the proposed rule. The Mid-Session Review baseline assumed the continuation of the $1 *de minimis* policy; the President's 2009 Budget baseline does not. Because of the change in assumptions about the *de minimis* policy, even if we had stayed with the five zero-premium organization policy in the proposed rule, the cost of the final rule would have changed from savings of approximately $20 million per year to costs of approximately $10 million per year. Second, this final rule changes the weighting methodology used to calculate the low-income

benchmark premium amount. As discussed in the rationale, CMS has changed the method for calculating the Federal premium subsidy for LIS beneficiaries so that the subsidy amount better reflects the premiums of plans in which LIS beneficiaries are enrolled. The final rule uses each plan's share of LIS enrollment, rather than each plan's share of total Part D enrollment, to weight each plan's premium. This change results in fewer reassignments than the proposed rule (approximately 400,000) and greater low-income premium subsidy costs. The relationship between reassignments and the premium subsidy is described above.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this regulation will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this regulation will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $130 million. This rule will have no consequential effect on State, local, or tribal governments in the aggregate, or by the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

B. Anticipated Effects

We have estimated the effect this regulation will have on the number of reassignments, the number of zero-premium plans available to full-subsidy eligible individuals in each region, and bid incentives.

This rule will reduce the number of reassignments compared to the current regulatory framework. In 2008, under the provisions of the ''Medicare Demonstration to Transition Enrollment of Low-Income Subsidy Beneficiaries,'' approximately 1.19 million LIS beneficiaries were reassigned to new Part D organizations. We estimated that if the 2008 benchmarks had been calculated under the current regulation (that is, full enrollment weighted using all enrollees), the number of LIS reassignments would have been 2.18 million. Under the policy in the proposed rule, the number of reassignments would have declined by approximately 200,000 (compared to the current regulation) to 2.0 million. We estimate that, if the 2008 benchmarks had been calculated using the LIS weighting methodology in this final rule, the benchmarks would have been higher in 21 of the 34 regions and the number of reassignments would have been 1.60 million—approximately 580,000 lower than under the current regulation. The amount of the benchmark increase averaged $2.22.

We estimate that this final rule, if implemented in 2008, would have reduced the benchmarks slightly in 13 regions as compared to the current regulation. These regions tend to have low MA–PD penetration and a concentration of LIS beneficiaries in PDPs with relatively low premiums. The amount of the benchmark reduction averaged $1.13. In 2008, these benchmark reductions would have increased reassignments in total by about 150,000. The 1.60 million estimate noted above is net of these increased reassignments.

We estimate that this final rule, if implemented in 2008, would have increased the number of zero premium organizations available to beneficiaries in 16 of the 34 PDP regions. This is somewhat lower than the number of regions where the benchmarks would have been higher (21), because some regions did not have any new plans that landed under the benchmark with the new calculation. In addition, in 2008, this regulation would have resulted in at least four zero-premium organizations in every Part D region with the exception of one region, which would have had three zero-premium organizations.

This approach maintains a strong incentive to bid low to keep and possibly add LIS beneficiaries. Absent the rule, there may be a ''winner take all'' outcome in certain regions with one organization acquiring all of the LIS beneficiaries in the region. It is difficult to predict what will happen in the absence of this rule, but we expect some organizations will be induced to bid even lower while other organizations will give up on this population and bid higher.

C. Alternatives Considered

As stated in the ''Background'' section of this final rule, we considered allowing PDP Sponsors to reduce their premium to the subsidy amount after it was established for LIS-eligible individuals without regard to the amount of their premium. We also considered allowing plans with premiums under a fixed dollar amount to reduce their low-income premiums to the premium subsidy amount (de minimis). We determined, however, that these options would undermine the integrity and competitiveness of the bidding process.

We also considered changing our approach to reassignment to an approach that would allow LIS-eligible individuals to be informed of zero-premium PDP options for full-subsidy eligibles, but would remain in their current plan, regardless of the premium, if they take no action. Beneficiary advocacy groups were concerned about beneficiaries being charged a premium without electing to pay it.

We also considered changing the regulation to calculate the benchmarks using MA–PD premiums before they have been reduced by Part C rebates. That approach, however, is not permitted under the statute.

Finally, we considered the policy in the proposed rule itself, which was an option for PDP Sponsors in regions with less than five zero-premium PDPs to offer a separate prescription drug premium amount for full subsidy eligible individuals subject to certain conditions. In response to comments received on the proposed rule, we determined that this approach did not address the reassignment issue as effectively as the LIS benchmark

weighting approach recommended by commenters.

D. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the cost associated due to increased Federal low-income premium subsidy payments, which are primarily the result of allowing a greater number of low-income beneficiaries to remain in their current plan, rather than reassigning them to a lower cost plan. All expenditures are classified as costs to the Federal Government.

TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR THE MODIFICATION TO THE WEIGHTING METHODOLOGY USED TO CALCULATE THE LOW-INCOME BENCHMARK AMOUNT, FINAL RULE

Category: Monetized costs	Costs ($ millions)
Single Year CY 2009	$60
Annualized Monetized Costs Using 7% Discount Rate FY 2009–FY 2018	114.6
Annualized Monetized Costs Using 3% Discount Rate FY 2009–FY 2018	119.3
Undiscounted Cumulative Costs—FY 2009–FY 2018	1,230

Costs reflect transfers from the Federal Government to Health Plans.

E. Conclusion

This rule is estimated to result in an increased Federal cost of $60 million in CY 2009 and $1.23 billion over the next 10 fiscal years (2009 through 2018). As explained above, these costs are primarily due to an increase in low-income premium subsidy payments. This rule will not have a significant economic impact on a substantial number of small entities, so we are not preparing an analysis for the RFA. In addition, the regulation will not have a significant impact on the operations of a substantial number of small rural hospitals, so we are not preparing an analysis for section 1102(b) of the Act. The analysis above, together with the preamble, provides a Regulatory Impact Analysis as it qualifies as a major rule under Executive Order 12866. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

This correction notice does not make any changes to the final rule printed in the **Federal Register** on April 3, 2008, which was the product of a public notice and comment process. Rather, this notice corrects an arithmetic error that was reflected in the impact analysis accompanying the final rule. Because this error does not affect the substance of the final rule or involve any exercise of policy discretion, we do not believe an additional comment period is necessary.

In addition, because MA organizations and PDP Sponsors have already begun the process of preparing their bids for 2009, and may take the erroneous impact analysis in the final rule into account in doing so, it is in the public interest to publish a corrected impact statement as soon as possible.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 11, 2008.

Ashley Files Flory,

Deputy Executive Secretary.

[FR Doc. 08–1136 Filed 4–11–08; 3:55 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7772]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	Unincorporated areas of Maricopa County (07–09–1354P).	January 10, 2008; January 17, 2008; *Arizona Business Gazette*.	The Honorable Fulton Brock, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	January 4, 2008	040037
Maricopa	City of Phoenix (07–09–1713P).	January 3, 2008; January 10, 2008; *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	January 14, 2008	040051
Mohave	City of Kingman (07–09–0639P).	January 24, 2008; January 31, 2008; *The Kingman Daily Miner*.	The Honorable Lester Byram, Mayor, City of Kingman, 310 North Fourth Street, Kingman, AZ 86401.	May 1, 2008	040060
Yavapai	Town of Prescott (07–09–1453P).	January 3, 2008; January 10, 2008; *Prescott Daily Courier*.	The Honorable Harvey C. Skoog, Mayor, Town of Prescott Valley, 7501 East Civic Circle, Prescott Valley, AZ 86314.	December 14, 2007	040121
Yavapai	Unincorporated areas of Yavapai County (07–09–1440P).	January 10, 2008; January 17, 2008; *Prescott Daily Courier*.	The Honorable Chip Davis, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	April 17, 2008	040093
California:					
San Diego	City of Chula Vista (07–09–1325P).	January 10, 2008; January 17, 2008; *San Diego Daily Transcript*.	The Honorable Cheryl Cox, Mayor, City of Chula Vista, 276 Fourth Avenue, Chula Vista, CA 91910.	December 27, 2007	065021
Shasta	City of Anderson (07–09–1860P).	January 9, 2008; January 16, 2008; *Anderson Valley Post*.	The Honorable Keith Webster, Mayor, City of Anderson, 1887 Howard Street, Anderson, CA 96007.	April 16, 2008	060359
Yuba	Unincorporated areas of Yuba County (07–09–1893P).	January 10, 2008; January 17, 2008; *The Appeal-Democrat*.	The Honorable Hal Stocker, Chairman, Yuba County Board of Supervisors, 915 Eighth Street, Suite 109, Marysville, CA 95901.	December 26, 2007	060427
Connecticut: Fairfield	Town of Greenwich (07–01–0700P).	January 18, 2008; January 25, 2008; *Greenwich Time*.	The Honorable Peter Tesei, First Selectman, Town of Greenwich, 101 Field Point Road, Greenwich, CT 06830.	January 9, 2008	090008
Florida:					
Lake	Unincorporated areas of Lake County (07–04–6495P).	January 10, 2008; January 17, 2008; *The Daily Commercial*.	The Honorable Welton G. Cadwell, Chairman, Lake County Board of Commissioners, P.O. Box 7800, Tavares, FL 32778–7800.	April 17, 2008	120421
Monroe	Village of Islamorada (07–04–6596P).	December 29, 2007; January 3, 2008; *Key West Citizen*.	The Honorable Chris Sante, Mayor, Village of Islamorada, P.O. Box 568, Islamorada, FL 33036.	December 10, 2007	120424
Monroe	Unincorporated areas of Monroe County (07–04–3519P).	January 24, 2008; January 31, 2008; *Key West Citizen*.	The Honorable Charles McCoy, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	May 1, 2008	125129
Georgia:					
Cherokee	City of Canton (07–04–2655P).	January 11, 2008; January 18, 2008; *Cherokee Tribune*.	The Honorable Cecil G. Pruett, Mayor, City of Canton, 151 Elizabeth Street, Canton, GA 30114.	December 26, 2007	130039
Cherokee	Unincorporated areas of Cherokee County (07–04–2655P).	January 11, 2008; January 18, 2008; *Cherokee Tribune*.	The Honorable Buzz Ahrens, Chairman, Cherokee County Board of Commissioners, 90 North Street, Suite 310, Canton, GA 30114.	December 26, 2007	130424

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Columbia	Unincorporated areas of Columbia County (07–04–2731P).	December 26, 2007; January 2, 2008; *Columbia County News-Times*.	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	April 2, 2008	130059
Columbia	Unincorporated areas of Columbia County (07–04–5157P).	December 26, 2007; January 2, 2008; *Columbia County News-Times*.	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	December 12, 2007	130059
Columbia	City of Grovetown (07–04–5157P).	December 26, 2007; January 2, 2008; *Columbia County News-Times*.	The Honorable Dennis O. Trudeau, Mayor, City of Grovetown, P.O. Box 120, Grovetown, GA 30813.	December 12, 2007	130265
Illinois:					
Clinton	Unincorporated areas of Clinton County (07–05–6034P).	January 24, 2008; January 31, 2008; *The Breese Journal*.	The Honorable Ray Kloeckner, Chairman, Clinton County Board of Directors, 4626 Court Road, Germantown, IL 62245.	January 10, 2008	170044
Kane	Unincorporated areas of Kane County (07–05–0178P).	January 24, 2008; January 31, 2008; *Kane County Chronicle*.	The Honorable Karen McConnaughay, Chairman, Kane County Board, 719 South Batavia Avenue, Geneva, IL 60134.	May 1, 2008	170896
Kane	Village of Sugar Grove (07–05–0178P).	January 24, 2008; January 31, 2008; *Kane County Chronicle*.	The Honorable P. Sean Michels, President, Village of Sugar Grove, P.O. Box 49, Sugar Grove, IL 60554.	May 1, 2008	170333
Lake	Unincorporated areas of Lake County (06–05–BR72P).	January 10, 2008; January 17, 2008; *Lake County News-Sun*.	The Honorable Suzi Schmidt, Chairman, Lake County Board of Commissioners, 18 North County Street, Room 1001, Waukegan, IL 60085.	April 17, 2008	170357
Lake	City of Waukegan (06–05–BR72P).	January 10, 2008; January 17, 2008; *Lake County News-Sun*.	The Honorable Richard H. Hyde, Mayor, City of Waukegan, 100 North Martin Luther King, Jr. Avenue, Waukegan, IL 60085.	April 17, 2008	170397
McHenry	Village of Fox River Grove (07–05–5055P).	January 10, 2008; January 17, 2008; *Northwest Herald*.	The Honorable Katherine A. Laube, President, Village of Fox River Grove, 305 Illinois Street, Fox River Grove, IL 60021.	April 17, 2008	170477
Morgan	City of Jacksonville (07–05–0512P).	January 10, 2008; January 17, 2008; *Jacksonville Journal-Courier*.	The Honorable Ron Tendick, Mayor, City of Jacksonville, 200 West Douglas Avenue, Jacksonville, IL 62650.	December 12, 2007	170516
Will	Village of Plainfield (07–05–5056P).	January 3, 2008; January 10, 2008; *Herald News*.	The Honorable James A. Waldorf, President, Village of Plainfield, 24401 West Lockport Street, Plainfield, IL 60544.	December 11, 2007	170771
Indiana: Miami	City of Peru (08–05–0338P).	December 13, 2007; December 20, 2007; *Peru Tribune*.	The Honorable James R. Walker, Mayor, City of Peru, 35 South Broadway, Peru, IN 46970.	December 31, 2007	180168
Iowa: Clive and Polk	City of Clive (07–07–1800P).	January 18, 2008; January 25, 2008; *The Des Moines Register*.	The Honorable Les Aasheim, Mayor, City of Clive, 1900 Northwest 114th Street, Clive, IA 50325.	April 25, 2008	190488
Massachusetts: Worcester.	Town of Southborough (07–01–0993P).	January 18, 2008; January 25, 2008; *Northborough-Southborough Villager*.	The Honorable Bonnie J. Phaneuf, Chair, Board of Selectmen, Southborough Town House, 17 Common Street, Southborough, MA 01772.	January 31, 2008	250333
North Dakota:					
Burleigh	City of Bismarck (07–08–0142A).	January 10, 2008; January 17, 2008; *Bismarck Tribune*.	The Honorable John Warford, Mayor, City of Bismarck, P.O. Box 5503, Bismarck, ND 58506–5503.	April 17, 2008	380149
Burleigh	Unincorporated areas of Burleigh County (07–08–0142A).	January 10, 2008; January 17, 2008; *Bismarck Tribune*.	The Honorable Marlan Haakenson, Chairman, Burleigh County Commission, 115 South Griffin Street, Bismarck, ND 58504–5309.	April 17, 2008	380017
Oregon: Clackamas, Multnomah, Washington.	City of Portland (07–10–0004P).	January 9, 2008; January 16, 2008; *The Gresham Outlook*.	The Honorable Tom Potter, Mayor, City of Portland, 1221 Southwest Fourth Avenue, Suite 340, Portland, OR 97204.	January 28, 2008	410183
Pennsylvania:					
Lehigh	Township of Salisbury (07–03–0947P).	January 3, 2008; January 10, 2008; *Express-Times*.	The Honorable Larry Unger, President, Township of Salisbury, 2900 South Pike Avenue, Allentown, PA 18103.	April 10, 2008	420591
Northampton	Township of Lower Mount Bethel (07–03–1293P).	January 3, 2008; January 10, 2008; *Express-Times*.	The Honorable Charles Palmeri, Chairman, Lower Mount Bethel Board of Supervisors, P.O. Box 257, Martins Creek, PA 18063.	April 10, 2008	420724
South Carolina:					
Charleston	City of Folly Beach (08–04–0583P).	January 3, 2008; January 10, 2008; *The Post and Courier*.	The Honorable Carl B. Beckmann, Jr., Mayor, City of Folly Beach, P.O. Box 48, Folly Beach, SC 29439.	December 18, 2007	455415
Greenville	Greenville County (07–04–5799P).	January 10, 2008; January 17, 2008; *The Greenville News*.	The Honorable Herman G. Kirven, Jr., Chairman, Greenville County Council, 301 University Ridge, Suite 2400, Greenville, SC 29601.	April 17, 2008	450089
Lexington	Lexington County (07–04–5473P).	December 6, 2007; December 13, 2007; *Lexington County Chronicle*.	The Honorable William C. ''Billy'' Derrick, Chairman, Lexington County Council, 212 South Lake Drive, Lexington, SC 29072.	March 13, 2008	450129

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Sumter	Unincorporated areas of Sumter County (07–04–6293P).	January 10, 2008; January 17, 2008; *Sumter Item*.	The Honorable Vivian Fleming-McGhaney, Chair, Sumter County Council, 13 East Canal Street, Sumter, SC 29150.	April 17, 2008	450182
Tennessee: Hamilton	City of Chattanooga (07–04–4405P).	January 10, 2008; January 17, 2008; *Chattanooga Times Free Press*.	The Honorable Ron Littlefield, Mayor, City of Chattanooga, 101 East 11th Street, Suite 100, Chattanooga, TN 37402.	April 17, 2008	470072
Texas:					
Collin	City of Allen (07–06–2412P).	January 10, 2008; January 17, 2008; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	April 17, 2008	480131
Collin	City of Celina (08–06–0373P).	January 3, 2008; January 10, 2008; *The Celina Record*.	The Honorable Corbett Howard, Mayor, City of Celina, 302 West Walnut Street, Celina, TX 75009.	December 26, 2007	480133
Dallas	City of Dallas (06–06-BF24P).	January 31, 2008; February 7, 2008; *The Mesquite News*.	The Honorable Tom Leppert, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	May 8, 2008	480171
Dallas	Town of Sunnyvale (06–06-BF24P).	January 31, 2008; February 7, 2008; *The Mesquite News*.	The Honorable Jim Phaup, Mayor, Town of Sunnyvale, 127 North Collins Road, Sunnyvale, TX 75182.	May 8, 2008	480188
Fort Bend	City of Katy (07–06–2143P).	January 3, 2008; January 10, 2008; *Fort Bend Herald*.	The Honorable Don Elder Jr., Mayor, City of Katy, P.O. Box 617, Katy, TX 77492.	December 14, 2007	480301
Kaufman	City of Terrell (07–06–1906P).	January 10, 2008; January 17, 2008; *The Terrell Tribune*.	The Honorable Hal Richards, Mayor, City of Terrell, P.O. Box 310, Terrell, TX 75160.	December 31, 2007	480416
Kaufman	Unincorporated areas of Kaufman County (06–06–BF24P).	January 31, 2008; February 7, 2008; *The Mesquite News*.	The Honorable Wayne Gent, Kaufman County Judge, 100 West Mulberry Street, Kaufman, TX 75142.	May 8, 2008	480411
Montgomery	Unincorporated areas of Montgomery County (06–06–B643P).	January 9, 2008; January 16, 2008; *The Montgomery County News*.	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson Street, Suite 210, Conroe, TX 77301.	April 9, 2008	480483
Travis	Unincorporated areas of Travis County (07–06–02514P).	January 10, 2008; January 17, 2008; *Austin American-Statesman*.	The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	April 17, 2008	481026
Williamson	Town of Hutto (07–06–0731P).	January 10, 2008; January 17, 2008; *Round Rock Leader*.	The Honorable Kenneth L. Love, Mayor, Town of Hutto, 401 West Front Street, Hutto, TX 78634.	April 17, 2008	481047
Washington: Whatcom.	Unincorporated areas of Whatcom County (07–10–0356P).	January 3, 2008; January 10, 2008; *The Bellingham Herald*.	The Honorable Pete Kremen, Whatcom County Executive, County Courthouse, 311 Grand Avenue, Suite 108, Bellingham, WA 98225.	December 17, 2007	530198

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 31, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–8325 Filed 4–16–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator of the Mitigation Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within

the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Etowah County, Alabama, and Incorporated Areas Docket No.: FEMA–B–7702			
Coosa River	St. Clair County Line	+511	City of Southside.
	Approximately 25,000 feet upstream of SR 77 Crossing	+516	
Coosa River	Approximately 1,000 feet downstream of confluence with Big Cove Creek.	+524	Town of Hokes Bluff.
	Approximately 35,000 feet upstream of confluence with Big Cove Creek.	+529	
Greenway Creek	Hooke Street Crossing	+523	City of Gadsden.
	Springfield Avenue Crossing	+530	
Little Cove Creek	U.S. 278 Crossing	+524	Town of Hokes Bluff.
	Approximately 6,000 feet upstream of U.S. 278 Crossing	+524	
Locust Fork of Black Warrior River.	Approximately 7,500 feet downstream of Payne Branch	+821	Town of Walnut Grove, Etowah County (Unincorporated Areas).
	Approximately 1,000 feet upstream of Payne Branch	+827	
Payne Branch	Confluence with Locust Fork of Black Warrior River	+824	Town of Walnut Grove.
	Ashville Road Crossing	+836	
Town Creek	Approximately 3,000 feet upstream of Tuscaloosa Avenue Crossing.	+544	City of Gadsden, Etowah County (Unincorporated Areas).
	Approximately 4,400 feet upstream of Tuscaloosa Avenue Crossing.	+544	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Gadsden
Maps are available for inspection at 90 Broad Street, Gadsden, AL 35901.

City of Southside
Maps are available for inspection at 2255 Highway 77, Southside, AL 35907.

Town of Hokes Bluff
Maps are available for inspection at 3301 Alford Bend Road, Hokes Bluff, AL 35903.

Town of Walnut Grove
Maps are available for inspection at 4012 Gadsden-Blountsville Rd., Walnut Grove, AL 35990.

Etowah County (Unincorporated Areas)
Maps are available for inspection at 800 Forrest Avenue, Gadsden, AL 35901.

Navajo County, Arizona, and Incorporated Areas Docket No.: FEMA–D–7826			
Cottonwood Wash	Approximately 150 feet upstream of confluence with Silver Creek.	+5568	Town of Snowflake, Town of Taylor.
	Approximately 3.18 miles upstream of Paper Mill Road	+5747	
Cottonwood Wash Split Flow	Approximately 300 feet upstream of confluence with Cottonwood Wash.	+5647	Town of Snowflake, Town of Taylor.
	Approximately 0.65 mile upstream of confluence with Cottonwood Wash.	+5666	
Hog Wash	Approximately 1,300 feet downstream of Hilltop Road	+6057	Unincorporated Areas of Navajo County.
	Approximately 1,440 feet upstream of Deuces Wild Road	+6280	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Hog Wash Tributary	Approximately 200 feet upstream of confluence with Hog Wash.	+6143	City of Show Low, Unincorporated Areas of Navajo County.
	Approximately 0.50 mile upstream of Smith Ranch Road	+6224	
Linden Draw	Approximately 2.20 miles downstream of School House Lane.	+6089	Unincorporated Areas of Navajo County.
	Approximately 0.71 mile upstream of Mission Lane	+6306	
Linden Draw Tributary	Approximately 100 feet upstream of confluence with Linden Draw.	+6189	Unincorporated Areas of Navajo County.
	Approximately 1,200 feet upstream of Burton Drive	+6276	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Show Low

Maps are available for inspection at 550 N. 9th Place, Show Low, AZ 85901.

Town of Snowflake

Maps are available for inspection at 81 West First Street, Snowflake, AZ 85937.

Town of Taylor

Maps are available for inspection at 425 Papermill Road, Taylor, AZ 85939.

Unincorporated Areas of Navajo County

Maps are available for inspection at 465 First Avenue, Holbrook, AZ 86025.

Del Norte County, California and Incorporated Areas
Docket No.: FEMA–B–7710

Middle Fork Smith River	At the Confluence with Smith River	+360	Del Norte County (Unincorporated Areas).
	Approximately 1.8 miles Upstream of Horace Gasquet Memorial Bridge.	+432	
Smith River (Gasquet Reach)—North Fork Smith River.	Approximately 300 feet Upstream of Mary Adams Memorial Road/US Highway 99.	+304	Del Norte County (Unincorporated Areas).
	Approximately 4,000 feet Upstream of Confluence With Middle Fork Smith River.	+379	
Smith River (Hiouchi Reach)	Approximately 2,000 feet Upstream of US Highway 101	+47	Del Norte County (Unincorporated Areas).
	Approximately 100 feet Downstream of SouthFork Road	+152	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Del Norte County (Unincorporated Areas)

Maps are available for inspection at 981 H Street, Suite 110, Crescent City, CA 95531.

Montezuma County, Colorado, and Incorporated Areas
Docket No.: FEMA–B–7746

Carpenter Wash	Downstream Study Limit—Cortez Corporate Boundary/North Broadway.	+6034	City of Cortez.
	Upstream Study Limit—500 feet Upstream (Southwest) of Empire Street.	+6162	
Denny Lake	Downstream Study Limit—Cortez Corporate Boundary/Hawkins Street.	+6120	City of Cortez.
	Upstream Study Limit—Empire Street	+6134	
Dolores River	Downstream Study Limit—2nd Street/Dolores Corporate Boundary.	+6932	Town of Dolores, Unincorporated Areas of Montezuma County.
	Upstream Study Limit—Breanna Lane/Dolores Corporate Boundary.	+6962	
Dolores River	Downstream Study Limit—Confluence With Lost Canyon Creek.	+6930	Unincorporated Areas of Montezuma County, Town of Dolores.
	Upstream Study Limit—Montezuma/Dolores County Line	+8446	
Glade Draw	Downstream Study Limit—1,600 feet Upstream (North) of McElmo Creek.	+5970	City of Cortez.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Upstream Study Limit—200 feet Upstream (North) of 7th Street.	+6139	
Industrial Wash	Downstream Study Limit—Confluence With Carpenter Wash.	+6046	City of Cortez.
	Upstream Study Limit—Cortez Corporate Boundary	+6055	
Lower Cornett Draw	Downstream Study Limit—Confluence With Carpenter Wash.	+6074	City of Cortez.
	Upstream Study Limit—Cortez Corporate Boundary	+6117	
Mancos River—Lower Reach	Downstream Study Limit—Confluence with Chicken Creek	+6816	Unincorporated Areas of Montezuma County, Town of Mancos.
	Upstream Study Limit—7,200 feet Upstream of Confluence With Chicken Creek/FEMA Cross Section N.	+6920	
Mancos River—Upper Reach	Downstream Study Limit—200 feet Upstream of Business 160 and Montezuma Street.	+7054	Unincorporated Areas of Montezuma County, Town of Mancos.
	Upstream Study Limit—700 feet Upstream of Highway 160.	+7116	
South Central	Downstream Study Limit—700 feet Upstream (North) of McElmo Creek.	+6021	City of Cortez.
	Upstream Study Limit—200 feet Downstream (South) of 4th Street.	+6143	
Walmart Tributary	Downstream Study Limit—1,200 feet Upstream (Northeast) of McElmo Creek.	+6068	City of Cortez, Unincorporated Areas of Montezuma County.
	Upstream Study Limit—100 feet Downstream (South) of Main Street.	+6140	
West Dolores River	Downstream Study Limit—Confluence with Dolores River	+7366	Unincorporated Areas of Montezuma County.
	Upstream Study Limit—Montezuma/Dolores County Line	+7546	
West South Central	Downstream Study Limit—Confluence with South Central	+6046	City of Cortez, Unincorporated Areas of Montezuma County.
	Upstream Study Limit—7th Street	+6134	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Cortez
Maps are available for inspection at City Hall, 210 E. Main Street, Cortez, CO 81321.

Town of Dolores
Maps are available for inspection at Town Hall, 420 Central Avenue, Dolores, CO 81321.

Town of Mancos
Maps are available for inspection at Town Hall, 117 North Main Street, Mancos, CO 81328.

Unincorporated Areas of Montezuma County
Maps are available for inspection at County Courthouse, 109 West Main Street, Cortez, CO 81321.

Hartford County, Connecticut (All Jurisdictions)
Docket No.: FEMA–B–7743

Connecticut River	At confluence with Dividend Brook	+26	Town of East Hartford, Town of East Windsor, Town of Enfield, Town of Glastonbury, City of Hartford, Town of Rocky Hill, Town of South Windsor, Town of Suffield, Town of Wethersfield, Town of Windsor, Town of Windsor Locks.
	At Connecticut/Massachusetts state boundary	+57	

Depth in feet above ground.
+ North American Vertical Datum.
* National Geodetic Vertical Datum.

ADDRESSES

Town of East Hartford

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

Maps are available for inspection at 740 Main Street, East Hartford, Connecticut 06108.

Town of East Windsor
Maps are available for inspection at East Windsor Town Hall, 11 Rye Street, Broad Brook, Connecticut 06016.

Town of Glastonbury
Maps are available for inspection at Town Hall, 2155 Main Street, Glastonbury, Connecticut 06033.

City of Hartford
Maps are available for inspection at Department of Public Works, 525 Main Street, Hartford, Connecticut 06103.

Town of Rocky Hill
Maps are available for inspection at 761 Old Main Street, Rocky Hill, Connecticut 06067.

Town of South Windsor
Maps are available for inspection at South Windsor Town Hall, 1540 Sullivan Avenue, South Windsor, Connecticut 06074.

Town of Suffield
Maps are available for inspection at Town Clerk's Office, 83 Mountain Road, Suffield, Connecticut 06078.

Town of Wethersfield
Maps are available for inspection at 505 Dean Silas Highway, Wethersfield, Connecticut 06109.

Town of Windsor
Maps are available for inspection at Windsor Town Hall, 275 Broad Street, Windsor, Connecticut 06095.

Town of Windsor Locks
Maps are available for inspection at Windsor Locks Town Hall, 50 Church Street, Windsor Locks, Connecticut 06096.

Town of Enfield
Maps are available for inspection at Enfield Town Engineer's Office, 820 Enfield Street, Enfield, Connecticut 06082.

District of Columbia Washington, DC
Docket No.: FEMA–B–7737

Anacostia River	Approximately at Anacostia Railroad Bridge	+13	District of Columbia.
	At approximately 200 feet upstream of New York Avenue	+17	
Barnaby Run	Approximately at the confluence with Oxon Run	+21	District of Columbia.
	At approximately 1,200 feet upstream of South Capital and Southern Avenue.	+53	
Broad Branch	At approximately 2,560 feet upstream of Ridge Road	+102	District of Columbia.
	At approximately 760 feet upstream of 27th Street	+187	
Creek Along Normanstone Drive.	At approximately 230 feet downstream of the Rock Creek Drive.	+40	District of Columbia.
	At approximately 190 feet upstream of Normanstone Drive	+150	
East Creek A	At approximately 2,250 feet downstream of Dalecarlia Parkway.	+165	District of Columbia.
	At approximately 675 feet downstream of Dalecarlia Parkway.	+169	
East Creek B	Approximately at the Glenbrook Road	+240	District of Columbia.
	At approximately 760 feet upstream of Driveway Bridge #4.	+308	
Fenwick Branch	Approximately at the confluence with Rock Creek	+176	District of Columbia.
	At approximately 3,620 feet upstream of the confluence with Tributary of Fenwick Branch.	+232	
Fort Dupont Creek	Approximately 500 feet downstream of Minnesota Avenue Bridge.	+23	District of Columbia.
	At approximately 40 feet downstream of Minnesota Avenue Bridge.	+29	
Melvin Hazen Branch	Approximately 1,000 feet upstream from Connecticut Avenue NW.	+208	District of Columbia.
	At approximately 125 feet downstream of Reno Road	+244	
Oxon Run	At approximately 320 feet upstream of the confluence with Barnaby Run.	+23	District of Columbia.
	At approximately 6,160 feet upstream of Wheeler Road	+103	
Pinehurst Run	Approximately at the confluence with Rock Creek	+165	District of Columbia.
	At approximately 3,100 feet upstream of Oregon Avenue	+255	
Pope Branch	At approximately 80 feet upstream of Minnesota Avenue	+45	District of Columbia.
	Approximately 4,630 feet upstream of Minnesota Avenue	+159	
Potomac River	At approximately 500 feet downstream of Route 95	+9	District of Columbia.
	At approximately 2,200 feet upstream of Chain Bridge Road.	+41	
Rock Creek	Approximately at the confluence with Potomac River	+16	District of Columbia.
	Approximately at the confluence with Fenwick Branch	+176	
Tributary to Fenwick Branch	Approximately at the confluence with Fenwick Creek	+191	District of Columbia.
	At approximately 2,500 feet upstream of the confluence with Fenwick Branch.	+231	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Watts Branch	Approximately at the confluence with Anacostia River	+15	District of Columbia.
	Approximately at Southern Avenue	+96	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

District of Columbia
Maps are available for inspection at 51 N Street, NE, Suite 5020, Washington, DC 20002.

Chatham County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–7752

Black Creek	Just upstream of Interstate Highway 95/State Highway 405.	+13	City of Port Wentworth.
	At Norfolk Southern Railway	+16	
Black Creek Tributary No. 2	At the confluence with Black Creek	+13	City of Port Wentworth.
	Approximately 2,990 feet upstream of Saussy Road	+15	
Chippewa Canal	Approximately 250 feet downstream of East Montgomery Cross Road.	+12	City of Savannah.
	Approximately 1,010 feet upstream of Mall Boulevard	+18	
Coffee Bluff Ponding Area	Entire Shoreline	+14	City of Savannah.
Colonial Oaks Canal	Just upstream of Stillwood Drive	+11	City of Savannah.
	At Windsor Road	+15	
Colonial Oaks Canal Tributary No. 1.	At the confluence with Colonial Oaks Canal	+11	City of Savannah.
	Approximately 640 feet upstream of Rockingham Road	+16	
Colonial Oaks Canal Tributary No. 1.1.	At the confluence with Colonial Oaks Canal Tributary No. 1.	+14	City of Savannah.
	Approximately 310 feet upstream of Stillwood Drive	+17	
Dundee Canal	Approximately 2,330 feet downstream of Chatham Parkway.	+11	Unincorporated Areas of Chatham County, City of Garden City, City of Savannah.
	Approximately 3,690 feet upstream of Chatham Parkway	+11	
Hardin Canal	Just upstream of Pine Barren Road	+13	Town of Pooler, City of Bloomingdale.
	At CSX Railroad (3rd crossing)	+19	
Harmon Canal	Just upstream of Edgewater Road	+12	City of Savannah.
	Approximately 570 feet upstream of Montgomery Cross Road.	+18	
Kingsway Canal	Just upstream of Whitfield Avenue/State Highway 204 Spur.	+11	Unincorporated Areas of Chatham County.
	Approximately 1,170 feet upstream of Kings Way	+14	
Little Ogeechee River Tributary	At Little Neck Road	+13	Unincorporated Areas of Chatham County.
	Approximately 3,120 feet upstream of Middle Landing Road.	+18	
Louis Mills Branch	At the confluence with South Springfield Canal	+12	Unincorporated Areas of Chatham County.
	Approximately 1,980 feet upstream of Marshall Avenue	+19	
Pipe Makers Canal	Approximately 1,000 feet upstream of Norfolk Southern Railway (1st crossing).	+11	Unincorporated Areas of Chatham County, City of Bloomingdale, City of Garde.City, City of Savannah, Town of Pooler.
	Just downstream of U.S. Highway 80/State Highway 17/26.	+21	
Pipe Makers Canal Tributary No. 2.	At the confluence with Pipe Makers Canal	+20	Unincorporated Areas of Chatham County, City of Bloomingdale, Town of Pooler.
	Approximately 500 feet downstream of Conaway Road	+20	
St. Augustine Creek Tributary	Approximately 6,180 feet downstream of Jimmy DeLoach Parkway.	+19	City of Bloomingdale, Unincorporated Areas of Chatham County.
	Approximately 4,820 feet upstream of Jimmy DeLoach Parkway.	+20	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Tributary to Little Ogeechee River Tributary.	At confluence with Little Ogeechee River Tributary	+15	Unincorporated Areas of Chatham County.
	Approximately 3,300 feet upstream of Middle Landing Road.	+19	
Windsor Forest Canal East	Approximately 330 feet upstream of Stillwood Drive	+11	City of Savannah.
	Approximately 710 feet upstream of Deerfield Road	+15	
Windsor Forest Canal Tributary	At the confluence with Windsor Forest Canal West	+16	City of Savannah.
	Approximately 2,980 feet upstream of confluence with Windsor Forest Canal West.	+17	
Windsor Forest Canal Tributary No. 2.	At the confluence with Windsor Forest Canal East	+13	City of Savannah.
	Approximately 390 feet upstream of Largo Drive	+17	
Windsor Forest Canal Tributary No. 3.	At the confluence with Windsor Forest Canal East and Colonial Oaks Canal.	+15	City of Savannah.
	Approximately 410 feet upstream of Windsor Road	+15	
Windsor Forest Canal West	Approximately 250 feet upstream of Thorny Bush Road ...	+11	City of Savannah.
	Approximately 3,410 feet upstream of Roger Warlick Drive	+19	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Bloomingdale
Maps are available for inspection at #8 West U.S. Highway 80, Bloomingdale, GA 31302.

City of Garden City
Maps are available for inspection at 100 Main Street, Garden City, GA 31408.

City of Port Wentworth
Maps are available for inspection at 305 South Coastal Highway, Port Wentworth, GA 31407.

City of Savannah
Maps are available for inspection at 2 East Bay Street, P.O. Box 1027, Savannah, GA 31401.

Town of Pooler
Maps are available for inspection at 100 Southwest Highway 80, Pooler, GA 31322.

Unincorporated Areas of Chatham County
Maps are available for inspection at 124 Bull Street, Suite 200, Savannah, GA 31401.

Chattooga County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–7752

Armuchee Creek	Approximately 350 feet downstream of county boundary ..	+635	Unincorporated Areas of Chattooga County.
	Approximately 1,250 feet upstream of county boundary	+636	
Chattooga River	Approximately 1,140 feet downstream of U.S. Highway 27/State Highway 1.	+656	Unincorporated Areas of Chattooga County, Town of Trion.
	Approximately 365 feet downstream of U.S. Highway 27/ State Highway 1.	+657	
Little Armuchee Creek	Approximately 920 feet downstream of county boundary ..	+636	Unincorporated Areas of Chattooga County.
	At county boundary	+636	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Trion
Maps are available for inspection at 1220 Pine Street, Trion, GA 30753.

Unincorporated Areas of Chattooga County
Maps are available for inspection at 120 Cox Street, Summerville, GA 30747–1398.

Crawford County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–7752

Echeconnee Creek	At the Crawford/Bibb/Peach County Boundary	+288	Unincorporated Areas of Crawford County.
	Just upstream of Boy Scout Road	+308	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Crawford County

Maps are available for inspection at 1011 Highway 341 North, Roberta, GA 31078.

Fayette County, Georgia, and Incorporated Areas

Tar Creek	Approximately 135 feet downstream of Lees Mill Road	+847	Unincorporated Areas of Fayette County.
	At confluence with Whitewater Creek	+847	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Fayette County

Maps are available for inspection at Stonewall Administration Complex, 140 Stonewall Avenue West, Suite 100, Fayetteville, GA 30214.

Haralson County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–7746

Cochran Creek	Approximately 950 feet downstream from Dallas Road	+1157	Unincorporated Areas of Haralson County, City of Buchanan.
	Approximately 750 feet upstream from Moore Street	+1199	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Buchanan

Maps are available for inspection at 4300 Highway 120, Buchanan, GA 30113.

Unincorporated Areas of Haralson County

Maps are available for inspection at 155 Van Wert Street, Buchanan, GA 30113.

Liberty County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–7752

Jerico River	Approximately 6,650 feet downstream of CSX railroad	+10	Unincorporated Areas of Liberty County.
	At CSX railroad	+10	
Mill Creek	Approximately 3,830 feet upstream of Fort Stewart Railway.	+71	Unincorporated Areas of Liberty County.
	Approximately 4,570 feet upstream of the confluence of Mill Creek Tributary No. 2.	+76	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Liberty County

Maps are available for inspection at Liberty County Courthouse Annex, Room 105, 12 North Main Street, Hinesville, GA 31313.

Lowndes County, Georgia, and Incorporated Areas
Docket No.: B–7700

Sugar Creek	At confluence with Withlacoochee River	+131	Lowndes County (Unincorporated Areas), City of Valdosta.
	Approximately 175 feet downstream of Gornto Road	+131	
Two Mile Branch	At confluence with Sugar Creek	+131	Lowndes County (Unincorporated Areas), City of Valdosta.
	Approximately 1,800 feet upstream of confluence with Sugar Creek.	+131	
Withlacoochee River	Approximately 9,250 feet downstream of State Highway 31.	+90	+Lowndes County (Unincorporated Areas)
	Approximately 4,950 feet upstream of abandoned railroad	+97	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Lowndes County (Unincorporated Areas)

Maps are available for inspection at the County Office, 325 West Savannah Avenue, Valdosta, Georgia 31601.

City of Valdosta

Maps are available for inspection at the County Office, 327 West Savannah Avenue, Valdosta, Georgia 31601.

Lowndes County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–7733 & D–7816

Sugar Creek	At Baytree Road Approximately 1,100 feet downstream of the confluence of One Mile Branch.	*145 *148	City of Remerton.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Remerton

Maps are available for inspection at 1757 Poplar Street, Remerton, GA 31601.

Putnam County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–7749

Rooty Creek	Approximately 60 feet upstream of Oconee Springs Road Approximately 2,380 feet upstream of Sparta Highway/State Highway 16/State Highway 44.	+452 +479	City of Eatonton.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Eatonton

Maps are available for inspection at 201 North Jefferson Avenue, Eatonton, GA 31204.

Shoshone County, Idaho, and Incorporated Areas
Docket No.: FEMA–B–7748

Pine Creek without levee	Approximately 600 feet upstream of Interstate 90 off-ramp Approximately 750 feet downstream of Ohio Avenue	+2208 +2240	City of Pinehurst.
Pine Creek without levee	Just upstream of Interstate 90 at Old ID State Route 10 Approximately 3,700 feet upstream of Ohio Avenue	+2198 +2277	Unincorporated Areas of Shoshone County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Pinehurst

Maps are available for inspection at 106 North Division Street, Pinehurst, ID 83850.

Unincorporated Areas of Shoshone County

Maps are available for inspection at 700 Bank Street, Suite 35, Wallace, ID 83873

Bossier Parish, Louisiana (Unincorporated Areas)
Docket No.: FEMA–P–7919

Alligator Bayou	At the confluence with Flat River Approximately 1,550 feet downstream of U.S. Highway 79/80 Eastbound.	*160 *162	City of Bossier City.
Benoit Bayou	At the confluence with Macks Bayou Segment G and Macks Bayou Segment H. Approximately 12,520 feet upstream of Brownlee Road	*168 *173	City of Bossier City, Bossier Parish (Unincorporated Areas).
Bossier Ditch	Approximately 60 feet upstream of the confluence with Cooper Bayou and Macks Bayou Segment F. Approximately 180 feet upstream of Benton Road	*159 *170	City of Bossier City.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Fifi Bayou	Just upstream of U.S. Interstate 20	*174	Bossier Parish (Unincorporated Areas).
	Approximately 9,000 feet upstream of Winfield Road	*190	
Flat River	Just upstream of State Route 527	*154	City of Bossier City, Bossier Parish (Unincorporated Areas).
	Approximately 500 feet upstream of U.S. Interstate 220 Westbound.	*164	
Flat River Drainage Canal	Just upstream of Coy Road	*165	City of Bossier City, Bossier Parish (Unincorporated Areas).
	Approximately 400 feet upstream of Airline Drive	*174	
Flat River (Upper Reach)	Approximately 540 feet upstream of the confluence with Flat River Drainage Canal.	*175	Bossier Parish (Unincorporated Areas).
	Approximately 4,830 feet upstream of the confluence of Willow Chute Lateral.	*177	
Herndon Ditch	At the confluence with Flat River	*158	City of Bossier City, Bossier Parish (Unincorporated Areas).
	Approximately 1,300 feet downstream of the confluence of Macks Bayou Segment B.	*158	
Lake Bistineau	Entire shoreline within Bossier Parish	*148	Bossier Parish (Unincorporated Areas).
Macks Bayou Segment A	At the confluence with Flat River	*157	City of Bossier City, Bossier Parish (Unincorporated Areas).
	Approximately 25 feet upstream of Golden Meadows Drive.	*157	
Macks Bayou Segment E	Approximately 1,025 feet upstream of the confluence with Bossier Ditch.	*163	City of Bossier City.
	Approximately 2,010 feet upstream of the confluence with Bossier Ditch.	*163	
Macks Bayou Segment G	Approximately 800 feet upstream of Kansas City Southern Railray.	*167	City of Bossier City.
	At the confluence of Benoit Bayou and junction with Macks Bayou Segment H.	*168	
Macks Bayou Segment H	Approximately 190 feet upstream of the confluence with Flat River.	*168	City of Bossier City, Bossier Parish (Unincorporated Areas).
	At the confluence of Benoit Bayou and divergence of Macks Bayou Segment G.	*168	
Racetrack Bayou	At the confluence with Willow Chute	*166	City of Bossier City.
	At U.S. Interstate 220 Westbound and divergence from Macks Bayou Segment H.	*168	
Red Chute Bayou	Approximately 12,400 feet upstream of Smith Road	*154	City of Bossier Parish (Unincorporated Areas).
	Approximately 4,050 feet upstream of Dogwood Trail	*169	
Willow Chute Lateral	At the confluence with Flat River (Upper Reach)	*177	Bossier Parish (Unincorporated Areas).
	Approximately 4,930 feet upstream of the confluence with Flat River (Upper Reach).	*177	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Bossier City

Maps are available for inspection at City Hall, 620 Benton Road, Bossier City, Louisiana.

Bossier Parish (Unincorporated Areas)

Maps are available for inspection at the Police Jury Office, 204 Burt Boulevard, Room 108, Benton, Louisiana.

Flooding source(s)	Location of referenced elevation	+ Baltimore County datum modified	Communities affected
Baltimore County, Maryland and Incorporated Areas Docket No.: FEMA–D–7684			
Dead Run	Approximately 180 feet upstream of Gwynn Oak Avenue	+337	Baltimore County (Unincorporated Areas).
	Approximately 726 feet upstream of Dogwood Road	+427	
Tributary No. 1 to Dead Run	At the confluence with Dead Run	+356	Baltimore County (Unincorporated Areas).
	Approximately 500 feet upstream of I–695	+395	
Tributary No. 3 to Dead Run	At the confluence with Dead Run	+388	Baltimore County (Unincorporated Areas).
	Approximately 400 feet upstream of Kennicott Road	+410	

+ Baltimore County Datum.

ADDRESSES

Baltimore County (Unincorporated Areas)

Maps are available for inspection at the Baltimore County Office Building, 111 West Chesapeake Avenue, Room 307, Towson, Maryland.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Bernalillo County, New Mexico and Incorporated Areas Docket No.: FEMA–B–7457			
Boca Negra Arroyo	Approximately 1,600 feet upstream of the confluence of Boca Negra Arroyo and Middle Tributary of Boca Negra Arroyo.	+5215	Bernalillo County (Unincorporated Areas).
	Approximately 2,600 feet upstream of the intersection of Faciel Rd. and Boca Negra Arroyo.	+5436	
Borrega Stream	Approximately 2,270 feet downstream from Perdiz Street	+4925	Bernalillo County (Unincorporated Areas).
	Approximately 1,550 feet upstream of 118th Street	+5210	
Calabacillas Arroyo	Confluence with Rio Grande and Calabacillas Arroyo	+5009	Bernalillo County (Unincorporated Areas).
	Upstream 500 feet of the intersection of Pratt St. NW and Navajo Dr. NW.	+5402	
Embudo Arroyo	Approximately 250 feet downstream of the intersection of Tramway Blvd and Embudo Arroyo.	+5838	Bernalillo County (Unincorporated Areas).
	Approximately 375 feet downstream of the intersection of Menaul Blvd. and Embudo Arroyo.	+6004	
Frost Arroyo	Approximately 125 feet northeast of intersection of Paa Ko Golf Dr. and North 14.	+6421	Bernalillo County (Unincorporated Areas).
	Confluence with San Pedro Creek	+6583	
Juniper Hill Arroyo	Approximately 500 feet downstream of the intersection of Eagle Nest Dr. and Juniper Hill Arroyo.	+6260	Bernalillo County (Unincorporated Areas).
	Approximately 875 feet upstream of the intersection of Eagle Nest Dr. and Juniper Hill Arroyo.	+6424	
Menaul Detention Basin	Menaul Detention Basin	+4999	Bernalillo County (Unincorporated Areas).
	Intersection of I25 and Menaul Detention Basin	+5028	
Mesa Del Sol Playa 1	Approximately 1,800 feet from the City of Albuquerque and Kirtland Air Force Base on the Isleta Reservation Boundary.	+5257	Bernalillo County (Unincorporated Areas).
Mesa Del Sol Playa 2	Approximately 2.2 miles north of the Isleta Reservation Boundary and 1.5 miles east of the City of Albuquerque and Kirtland Air Force Base Boundary.	+5268	Bernalillo County (Unincorporated Areas).
Mesa Del Sol Playa 3	Approximately 1,400 feet from the City of Albuquerque and Kirtland Air Force Base to the east and coincident with the City of Albuquerque and Isleta Indian Reservation Boundary.	+5283	Bernalillo County (Unincorporated Areas).
Middle Tributary of Boca Negra Arroyo.	Approximately 250 feet downstream of the intersection of Rim Rock and Middle Tributary of Boca Negra Arroyo.	+5296	Bernalillo County (Unincorporated Areas).
	Approximately 375 feet upstream of the intersection of Boulevard De Oest Ln. and Middle Tributary of Boca Negra Arroyo.	+5617	
Pino Arroyo	Approximately 1,000 feet upstream of the intersection of Pino Arroyo and I25.	+5220	Bernalillo County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 500 feet upstream of the intersection of Wyoming Blvd and Pino Arroyo.	+5405	
San Antonio Arroyo North	Confluence of San Antonio Arroyo North and San Antonio Arroyo South.	+5119	Bernalillo County (Unincorporated Areas).
	Approximately 2,000 feet upstream of the intersection of Carrick St. and San Antonio Arroyo North.	+5182	
San Antonio Arroyo South	Aproximately 125 feet downstream of the intersection of Coors Blvd. and San Antonio Arroyo South.	+5050	Bernalillo County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the intersection of Vulcan Rd. and San Antonio Arroyo South.	+5167	
San Pedro Creek	Intersection of Bus Lane and San Pedro Creek	+6858	Bernalillo County (Unincorporated Areas).
	Intersection of Old Crest Rd. and San Pedro Creek	+6955	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Bernalillo County

Maps are available for inspection at Bernalillo Public Works, 2400 Broadway SE, Albuquerque, NM 87102.

City of Albuquerque

Maps are available for inspection at Plaza Del Sol, 600 2nd Street NW, Albuquerque, NM 87102.

Erie County, New York (All Jurisdictions)
Docket No.: FEMA–B–7746

Cazenovia Creek	At a point approximately 175 feet upstream of Bailey Road.	+584	City of Buffalo.
	At a point approximately 830 feet upstream from the Golf Course Bridge.	+597	
Ellicott Creek	At a point approximately 1,738 feet downstream of Glen Avenue.	+608	Village of Williamsville.
	A point located approximately 230 feet downstream of Interstate 90.	+683	
Spicer Creek	A point located approximately 1,625 feet upstream of East River Road.	+571	Town of Grand Island.
	A point located approximately 3,350 feet upstream of Harvey Road.	+585	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Buffalo

Maps are available for inspection at Buffalo City Hall, 65 Niagara Square, Buffalo, New York.

Town of Grand Island

Maps are available for inspection at Grand Island Town Hall, 2255 Baseline Road, Grand Island, New York.

Village of Williamsville

Maps are available for inspection at Williamsville Village Hall, 5565 Main Street, Williamsville, New York.

Cleveland County, Oklahoma, and Incorporated Areas
Docket No.: FEMA–B–7706

Dave Blue Creek North	Approximately 100 feet downstream of State Highway 9	+1120	City of Norman.
	Approximately 3000 feet upstream from State Highway 9	+1131	
East Rock Creek	Approximately 500 feet downstream from 36th Ave	+1118	City of Norman.
	Approximately 4500 feet upstream from 36th Ave	+1139	
Stream B	Approximately 1000 feet upstream from confluence with North Fork River.	+1142	City of Moore.
	Approximately 1900 feet upstream from SE 19th St	+1165	
Tributary 0 of Canadian River Tributary 1.	Confluence with Canadian Tributary 1	+1179	City of Moore, City of Oklahoma City.
	Approximately 700 feet upstream from North Nottingham Way.	+1290	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

ADDRESSES

City of Moore
Maps are available for inspection at 301 North Broadway, Moore, OK 73160.

City of Norman
Maps are available for inspection at 201 South Jones, Norman, OK 73068.

City of Oklahoma City
Maps are available for inspection at 420 West Main, Suite 700, Oklahoma City, OK 73102.

Washington County, Oklahoma, and Incorporated Areas
Docket No.: FEMA–B–7705

Caney River	Approximately 2,000 feet upstream from West 2350 Drive	+664	City of Bartlesville, Washington County (Unincorporated Areas).
	At intersection with West 1400 Road	+684	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Bartlesville
Maps are available for inspection at 420 S. Johnstone, Bartlesville, OK 74004.

Washington County (Unincorporated Areas)
Maps are available for inspection at 420 S. Johnstone, Bartlesville, OK 74004.

Clinton County, Pennsylvania, and Incorporated Areas
Docket No.: B–7718

Fishing Creek	Approximately 550 feet downstream of Peale Avenue	+569	Borough of Mill Hall, Township of Bald Eagle, Township of Lamar, Township of Porter.
	Approximately at 4420 feet upstream of Furnance Road (Township Route 323).	+862	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Borough of Mill Hall
Maps are available for inspection at Beach Creek Avenue, Mill Hall, PA 17751.

Township of Bald Eagle
Maps are available for inspection at 604 Lusk Run Road, Mill Hall, PA 17751.

Township of Lamar
Maps are available for inspection at 148 Beagle Road, Mill Hall, PA 17751.

Township of Porter
Maps are available for inspection at 153 Clintondale Hill Road, Mill Hall, PA 17751.

York County, South Carolina and Incorporated Areas
Docket Nos.: FEMA–B–7463 and FEMA–B–7706

Abernathy Creek	Approximately 4,550 feet downstream of Rowells Road	+484	York County (Unincorporated Areas).
	Approximately 300 feet downstream of Rowells Road	+509	
Allison Creek	At the confluence with Big Allison Creek	+667	York County (Unincorporated Areas), Town of Clover.
	Approximately 3,800 feet upstream of Faulkner Road	+703	
Allison Creek Tributary	At the confluence with Allison Creek	+679	York County (Unincorporated Areas).
	Just downstream of Faulkner Road	+686	
Allison Creek Tributary 1	At the confluence with Allison Creek	+676	York County (Unincorporated Areas).
	Approximately 275 feet upstream of Thomas Road	+731	
Allison Creek Tributary 2	At the confluence with Allison Creek Tributary 1	+698	York County (Unincorporated Areas).
	Approximately 310 feet downstream of Thomas Road	+721	
Beaverdam Creek	At the confluence with Crowders Creek	+579	York County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1,090 feet downstream of Barrett Road	+736	
Beaverdam Creek West	At the confluence with Broad River	+438	York County (Unincorporated Areas).
	Approximately 1,270 feet upstream of the Dagnall Road	+582	
Beaverdam Creek Tributary 1	At the confluence with Beaverdam Creek	+593	York County (Unincorporated Areas).
	Approximately 6,010 feet upstream of Chimney Ford Road.	+666	
Beaverdam Creek Tributary 2	At the confluence with Beaverdam Creek	+635	York County (Unincorporated Areas).
	Approximately 320 feet downstream of Bate Harvey Road	+685	
Beaverdam Creek Tributary 3	At the confluence with Beaverdam Creek	+649	Town of Clover.
	Approximately 7,540 feet upstream of Old Carriage Road	+728	
Beaverdam Creek Tributary 4	At the confluence with Beaverdam Creek	+711	York County (Unincorporated Areas), Town of Clover.
	Approximately 640 feet upstream of Carbon Metallic Hwy	+789	
Big Branch	At the confluence with Big Allison Branch	+575	York County (Unincorporated Areas).
	Approximately 1,155 feet southwest of the intersection of Old Cedar Circle and Big Branch Court.	+612	
Big Allison Creek	At the confluence with Lake Wylie	+570	York County (Unincorporated Areas).
	Approximately 5,570 feet upstream of the confluence with Big Allison Creek Tributary 4.	+771	
Big Allison Creek Tributary 1	At the confluence with Big Allison Branch	+634	York County (Unincorporated Areas).
	Approximately 5,280 feet upstream of Paraham Road South.	+634	
Big Allison Creek Tributary 2	At the confluence with Big Allison Creek	+633	York County (Unincorporated Areas).
	Just downstream of Meadow Road	+641	
Big Allison Creek Tributary 3	At the confluence with Big Allison Creek	+673	York County (Unincorporated Areas).
	Approximately 60 feet upstream of Brown Pelican Court	+713	
Big Allison Creek Tributary 4	At the confluence with Big Allison Creek	+735	York County (Unincorporated Areas).
	Approximately 80 feet downstream of Wilmoth Road	+784	
Big Dutchman Creek	At the confluence with Catawba River	+511	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 50 feet downstream of Mt. Gallant Road	+515	
Blue Branch	At the confluence with Turkey Creek	+387	York County (Unincorporated Areas).
	Approximately 550 feet downstream of McConnells Hwy West.	+472	
Blue Branch Tributary 1	At the confluence with Blue Branch	+392	York County (Unincorporated Areas).
	Approximately 3,800 feet upstream above the confluence with Blue Branch.	+442	
Broad River	Approximately 7,030 feet downstream of the confluence of Robertson Branch.	+433	York County (Unincorporated Areas).
	At the confluence of Kings Creek	+456	
Bryson Creek	At the confluence with Turkey Creek	+414	York County (Unincorporated Areas).
	Approximately 430 feet downstream of Parson Road	+540	
Buck Horn Creek	At the confluence with Susybole Creek	+490	York County (Unincorporated Areas).
	Approximately 440 feet downstream of Templeton Road	+744	
Buck Horn Creek Tributary 1	At the confluence with Buck Horn Creek	+562	York County (Unincorporated Areas).
	Approximately 780 feet upstream of Broadhurst Lane	+609	
Buck Horn Creek Tributary 2	At the confluence with Buck Horn Creek	+578	York County (Unincorporated Areas).
	Approximately 1,550 feet upstream of Propst Road	+593	
Buck Horn Creek Tributary 3	At the confluence with Buck Horn Creek	+577	York County (Unincorporated Areas).
	Approximately 1,960 feet upstream of Propst Road	+607	
Buck Horn Creek Tributary 4	At the confluence with Buck Horn Creek	+619	York County (Unincorporated Areas).
	Approximately 2,720 feet upstream of Quarry Road	+719	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Buck Horn Creek Tributary 5	At the confluence with Buck Horn Creek	+638	York County (Unincorporated Areas).
	Approximately 2,940 feet upstream of the confluence with Buck Horn Creek.	+736	
Buck Horn Creek Tributary 6	At the confluence with Buck Horn Creek	+701	York County (Unincorporated Areas).
	Approximately 450 feet southeast of the intersection of Hartness Road and Templeton Road.	+746	
Bullock Creek	At the confluence with Broad River	+436	York County (Unincorporated Areas).
	Approximately 1,220 feet upstream of Crossland Road	+662	
Bullock Creek Tributary 1	At the confluence of Bullock Creek	+474	York County (Unincorporated Areas).
	Approximately 3,370 feet upstream of the confluence with Bullock Creek.	+487	
Bullock Creek Tributary 2	At the confluence of Bullock Creek	+491	York County (Unincorporated Areas).
	Approximately 8,890 feet upstream of the confluence with Bullock Creek.	+547	
Bullock Creek Tributary 3	At the confluence of Bullock Creek	+506	York County (Unincorporated Areas).
	Approximately 4,500 feet upstream of the confluence with Bullock Creek.	+539	
Bullock Creek Tributary 4	At the confluence of Bullock Creek	+514	York County (Unincorporated Areas).
	Approximately 2,520 feet upstream of the confluence with Bullock Creek.	+541	
Bullock Creek Tributary 5	At the confluence of Bullock Creek	+522	York County (Unincorporated Areas).
	Approximately 1,350 feet upstream of the confluence with Bullock Creek.	+529	
Bullock Creek Tributary 6	At the confluence of Bullock Creek	+530	York County (Unincorporated Areas).
	Approximately 2,110 feet upstream of the confluence with Bullock Creek.	+550	
Bullock Creek Tributary 7	At the confluence of Bullock Creek	+620	York County (Unincorporated Areas).
	Approximately 90 feet downstream of Beersheba Road North.	+649	
Burgis Creek	At the confluence of Catawba River	+492	York County (Unincorporated Areas).
	Approximately 100 feet downstream of White Horse Road	+550	
Calabash Branch	At the confluence with Big Allison Creek	+618	York County (Unincorporated Areas), Town of Clover.
	Approximately 850 feet upstream of McConnell Street	+762	
Camp Run	At the confluence with Beaverdam Creek	+594	York County (Unincorporated Areas).
	Approximately 300 feet upstream of W. H. Stowe Road	+606	
Carter Branch	At the confluence with Susybole Creek	+458	York County (Unincorporated Areas).
	Approximately 1,640 feet upstream of Burgis Road South	+490	
Catawba River	Approximately 4,370 feet downstream of the Railroad crossing.	+467	York County (Unincorporated Areas), Catawba Indian Nation.
	Just downstream of the Lake Wylie Dam	+517	
Catawba River Tributary 1	At the confluence with Catawba River	+467	York County (Unincorporated Areas), City of Rock Hill.
	At the Chester/York County Boundary	+502	
Catawba River Tributary 2	At the confluence with Catawba River	+480	York County (Unincorporated Areas).
	Approximately 3,370 feet upstream of the confluence with Catawba River.	+503	
Catawba River Tributary 3	At the confluence with Mooneys Hill Branch	+521	York County (Unincorporated Areas).
	Approximately 1,605 feet upstream of the confluence with Mooneys Hill Branch.	+539	
Catawba River Tributary 4	At the confluence with Mooneys Hill Branch	+535	York County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1,980 feet upstream of the confluence with Mooneys Hill Branch.	+545	
Catawba River Tributary 6	At the confluence with Lake Wylie	+570	York County (Unincorporated Areas).
	Approximately 1,980 feet upstream of the confluence with Lake Wylie.	+573	
Catawba River Tributary 9	At the confluence with Catawba River Tributary 3	+529	York County (Unincorporated Areas).
	Approximately 585 feet upstream of the confluence with Catawba River Tributary 10.	+548	
Catawba River Tributary 10	At the confluence with Catawba River Tributary 9	+537	York County (Unincorporated Areas).
	Approximately 625 feet upstream of the confluence with Catawba River Tributary 9.	+547	
Catawba River Tributary 11	At the confluence with Catawba River	+480	York County (Unincorporated Areas).
	Approximately 4,530 feet upstream of the confluence with Catawba River.	+507	
Clark Creek	At the confluence with Bullock Creek	+467	York County (Unincorporated Areas).
	Approximately 2,310 feet upstream of Park Road	+704	
Clark Creek Tributary 1	At the confluence with Clark Creek	+477	York County (Unincorporated Areas).
	Approximately 870 feet downstream of Walnut Street Extension.	+496	
Clark Creek Tributary 2	At the confluence with Clark Creek	+489	York County (Unincorporated Areas).
	Approximately 1,650 feet upstream of the confluence with Clark Creek.	+507	
Clark Creek Tributary 3	At the confluence with Clark Creek	+503	York County (Unincorporated Areas).
	Approximately 2,210 feet upstream of the confluence with Clark Creek.	+519	
Clark Creek Tributary 4	At the confluence with Clark Creek	+520	York County (Unincorporated Areas).
	Approximately 1,710 feet upstream of the confluence with Clark Creek.	+536	
Clark Creek Tributary 5	At the confluence with Clark Creek	+527	York County (Unincorporated Areas).
	Approximately 2,000 feet upstream of the confluence with Clark Creek.	+545	
Clark Creek Tributary 6	At the confluence with Clark Creek	+539	York County (Unincorporated Areas).
	Approximately 1,800 feet upstream of the confluence with Clark Creek.	+567	
Clark Creek Tributary 8	At the confluence with Clark Creek	+543	York County (Unincorporated Areas).
	Approximately 1,490 feet upstream of the confluence with Clark Creek.	+569	
Clinton Branch	Approximately 2,160 feet downstream of the confluence of Clinton Branch Tributary 1.	+513	York County (Unincorporated Areas).
	Approximately 2,280 feet downstream of Mount Holly Road.	+612	
Clinton Branch Tributary 1	At the confluence of Clinton Branch	+522	York County (Unincorporated Areas).
	Approximately 3,230 feet upstream of the confluence with Clinton Branch.	+548	
Conrad Creek	Approximately 2,160 feet downstream of the confluence with Conrad Creek Tributary 1.	+551	York County (Unincorporated Areas).
	Approximately 6,120 feet upstream of the confluence of Conrad Creek Tributary 5.	+638	
Conrad Creek Tributary 1	At the confluence with Conrad Creek	+554	York County (Unincorporated Areas).
	Approximately 4,450 feet upstream of the confluence with Conrad Creek.	+581	
Conrad Creek Tributary 2	At the confluence with Conrad Creek	+568	York County (Unincorporated Areas).
	Approximately 1,540 feet upstream of Lowrys Road	+616	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Conrad Creek Tributary 3	At the confluence with Conrad Creek	+567	York County (Unincorporated Areas).
	Approximately 4,470 feet upstream of the confluence with Conrad Creek.	+601	
Conrad Creek Tributary 4	At the confluence with Conrad Creek	+583	York County (Unincorporated Areas).
	Approximately 5,450 feet upstream of the confluence with Conrad Creek.	+613	
Conrad Creek Tributary 5	At the confluence with Conrad Creek	+592	York County (Unincorporated Areas).
	Approximately 6,190 feet upstream of the confluence with Conrad Creek.	+640	
Creekside Branch	At the confluence with Langham Branch	+588	York County (Unincorporated Areas), City of York.
	Approximately 665 feet upstream of the confluence of Creekside Branch Tributary 1.	+649	
Creekside Branch Tributary 1 ...	At the confluence with Creekside Branch	+647	York County (Unincorporated Areas), City of York.
	Approximately 300 feet south of the intersection of Benfield Avenue and Lynwood Circle.	+681	
Creekside Branch Tributary 2 ...	At the confluence with Creekside Branch	+637	York County (Unincorporated Areas).
	Approximately 3,810 feet upstream of the confluence of Creekside Branch Tributary 7.	+674	
Creekside Branch Tributary 4 ...	At the confluence with Creekside Branch	+602	York County (Unincorporated Areas).
	Approximately 2,905 feet upstream of the confluence of Creekside Branch Tributary 7.	+616	
Creekside Branch Tributary 5 ...	At the confluence with Creekside Branch	+637	York County (Unincorporated Areas), City of York.
	Approximately 1,290 feet upstream of the confluence of Creekside Branch.	+640	
Creekside Branch Tributary 6 ...	At the confluence with Creekside Branch	+639	York County (Unincorporated Areas).
	Approximately 1,630 feet upstream of the confluence of Creekside Branch.	+644	
Creekside Branch Tributary 7 ...	At the confluence with Creekside Branch Tributary 2	+637	York County (Unincorporated Areas).
	Approximately 930 feet upstream of the confluence of Creekside Branch Tributary 2.	+638	
Crowders Creek	At the confluence with Lake Wylie	+570	York County (Unincorporated Areas).
	Approximately 2,800 feet upstream of confluence of Crowder Creek Tributary 1.	+618	
Crowders Creek Tributary 1	At the confluence with Crowders Creek	+615	York County (Unincorporated Areas).
	Approximately 1,980 feet upstream of confluence with Crowder Creek.	+622	
Crowders Creek Tributary 2	At the confluence with Crowders Creek	+575	York County (Unincorporated Areas).
	Approximately 4,100 feet upstream of confluence with Crowder Creek.	+597	
Crowders Creek Tributary 3	Approximately 6,810 feet downstream of Colonial Road ...	+641	York County (Unincorporated Areas).
	Approximately 4,430 feet downstream of Colonial Road ...	+654	
Diggers Branch	At the confluence with Clark Creek	+556	York County (Unincorporated Areas).
	Approximately 2,260 feet upstream of Jenkins Road	+649	
Dry Fork	At the confluence with Turkey Creek	+482	York County (Unincorporated Areas).
	Approximately 150 feet downstream of Sharon Road	+521	
Dry Fork Tributary 1	At the confluence of Dry Fork	+488	York County (Unincorporated Areas), Town of Fort Mill.
	Approximately 130 feet downstream of Sharon Road	+510	
Dye Branch	At the confluence with Catawba River	+507	York County (Unincorporated Areas).
	Approximately 1,425 feet downstream of Harris Road	+531	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Ferry Branch	At the confluence with Catawba River	+475	York County (Unincorporated Areas).
	Approximately 3,540 feet upstream of Ferry Branch Tributary 3.	+612	
Ferry Branch Tributary 2	At the confluence with Ferry Branch	+533	York County (Unincorporated Areas).
	Approximately 1,450 feet downstream of Reservation Road.	+555	
Ferry Branch Tributary 3	At the confluence with Ferry Branch	+568	York County (Unincorporated Areas).
	Approximately 470 feet downstream of Cureton Ferry Road.	+577	
Fishing Creek	Approximately 2,470 feet downstream of the confluence of a unnamed tributary to Fishing Creek.	+486	York County (Unincorporated Areas), City of Rock Hill, City of York.
	Approximately 760 feet upstream of Lincoln Road	+656	
Fishing Creek Tributary	At the confluence with Fishing Creek	+547	York County (Unincorporated Areas).
	Approximately 2,925 feet upstream of Zinker Road	+605	
Fishing Creek Tributary 1	At the confluence with Fishing Creek	+642	York County (Unincorporated Areas), City of York.
	At Lincoln Road	+710	
Fishing Creek Tributary 1A	At the confluence with Fishing Creek Tributary 1	+677	City of York.
	At Ross Cannon Street	+704	
Fishing Creek Tributary 1B	At the confluence with Fishing Creek Tributary 1	+686	City of York.
	At Hall Street	+705	
Fishing Creek Tributary 2	At the confluence with Fishing Creek	+595	York County (Unincorporated Areas).
	Approximately 1,640 feet southeast of the intersection of Country Trail Road and Ernest Road.	+636	
Fishing Creek Tributary 3	At the confluence with Fishing Creek	+643	York County (Unincorporated Areas), City of York.
	Approximately 2,890 feet upstream of Alexander Love Hwy East.	+693	
Fishing Creek Tributary 4	At the confluence with Fishing Creek	+532	York County (Unincorporated Areas).
	Approximately 50 feet downstream of Oak Park Road	+546	
Fishing Creek Tributary 5	At the confluence with Fishing Creek	+540	York County (Unincorporated Areas).
	Approximately 1,985 feet upstream of the confluence of Fishing Creek Tributary 7.	+598	
Fishing Creek Tributary 6	At the confluence with Fishing Creek Tributary 5	+563	York County (Unincorporated Areas).
	Approximately 490 feet downstream of Highwood Road	+604	
Fishing Creek Tributary 7	At the confluence with Fishing Creek Tributary 5	+571	York County (Unincorporated Areas).
	Approximately 1,255 feet upstream of the confluence with Fishing Creek Tributary 5.	+596	
Fishing Creek Tributary 8	At the confluence with Fishing Creek Tributary 6	+580	York County (Unincorporated Areas).
	Approximately 450 feet upstream of Highwood Road	+597	
Fishing Creek Tributary 9	At the confluence with Fishing Creek	+623	York County (Unincorporated Areas).
	Approximately 790 feet upstream of Trotter Place	+660	
Fishing Creek Tributary 10	At the confluence with Fishing Creek	+614	York County (Unincorporated Areas), City of York.
	Approximately 50 feet northeast of the end of Cricket Run	+631	
Fishing Creek Tributary 11	At the confluence with Fishing Creek	+554	York County (Unincorporated Areas).
	Approximately 2,550 feet upstream of Turkey Farm Road	+580	
Fishing Creek Tributary 12	At the confluence with Fishing Creek	+565	York County (Unincorporated Areas).
	Approximately 2,605 feet upstream of the confluence with Fishing Creek.	+575	
Fishing Creek Tributary 13	At the confluence with Fishing Creek	+567	York County (Unincorporated Areas).
	Approximately 2,780 feet upstream of the confluence with Fishing Creek.	+584	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Fishing Creek Tributary 14	At the confluence with Fishing Creek	+569	York County (Unincorporated Areas).
	Approximately 3,690 feet upstream of the confluence with Fishing Creek.	+600	
Fishing Creek Tributary 15	At the confluence with Fishing Creek	+575	York County (Unincorporated Areas).
	Approximately 1,650 feet upstream of the confluence with Fishing Creek.	+594	
Fishing Creek Tributary 16	At the confluence with Fishing Creek Tributary 2	+617	York County (Unincorporated Areas).
	Approximately 3,150 feet upstream of the confluence with Fishing Creek Tributary 2.	+675	
Gin Branch	At the confluence with Bullock Creek	+598	York County (Unincorporated Areas).
	Approximately 70 feet downstream of Bush Road	+639	
Grist Branch	At the confluence with Big Allison Creek	+610	York County (Unincorporated Areas).
	Approximately 60 feet downstream of Wood Drive	+625	
Guyon Moore Creek	At the confluence with Broad River	+446	York County (Unincorporated Areas).
	Approximately 7,370 feet upstream of the confluence of Guyon Moore Creek.	+597	
Guyon Moore Creek Tributary 1	At the confluence with Guyon Moore Creek	+538	York County (Unincorporated Areas).
	Approximately 1,980 feet upstream of the confluence Guyon Moore Creek.	+558	
Haggins Branch	At the confluence with Catawba River	+483	York County (Unincorporated Areas).
	Approximately 394 feet upstream of Greenwood Road	+557	
Hidden Creek	At the confluence with Catawba River	+511	York County (Unincorporated Areas), City of Rock Hill.
	Just downstream of Riverview Road	+563	
Jennings Branch	At the confluence with Clark Creek	+673	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 4,280 feet upstream of the confluence with Clark Creek.	+683	
Johnson Branch	At the confluence with Rock Branch	+608	York County (Unincorporated Areas).
	Approximately 1,440 feet downstream of Lincoln Road	+626	
Jones Branch	At the confluence with Dye Branch	+515	York County (Unincorporated Areas).
	Approximately 280 feet downstream of Harris Road	+582	
Kings Creek	At the confluence with Broad River	+493	York County (Unincorporated Areas).
	Approximately 5,330 feet upstream of River Road	+515	
Kirkpatrick Branch	At the confluence with Bullock Creek	+436	York County (Unincorporated Areas).
	Approximately 1,600 feet downstream of Lockhart Road ...	+472	
Lake Wylie	.....	+570	York County (Unincorporated Areas), City of Tega Cay.
Langham Branch	At the confluence with Fishing Creek	+573	York County (Unincorporated Areas), City of York.
	Approximately 250 feet downstream of Liberty Street East	+668	
Langham Branch Tributary 2	At the confluence with Langham Branch	+587	York County (Unincorporated Areas).
	Approximately 1,890 feet upstream of the confluence with Langham Branch.	+598	
Leroy Branch	At the confluence with Steele Creek	+526	York County (Unincorporated Areas), Town of Fort Mill.
	Approximately 175 feet upstream of the confluence of Leroy Branch Tributary 1.	+562	
Leroy Branch Tributary 1	At the confluence with Leroy Branch	+561	Town of Fort Mill.
	Approximately 1,000 feet upstream of the confluence with Leroy Branch.	+574	
Lindsey Creek	At the confluence with Wright Creek	+496	York County (Unincorporated Areas).
	Approximately 610 feet upstream of Larchwood Road	+605	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Lindsey Creek Tributary 1	At the confluence with Lindsey Creek	+572	York County (Unincorporated Areas).
	Approximately 990 feet downstream of Larchwood Road ..	+600	
Little Allison Creek	At the confluence with Lake Wylie	+570	York County (Unincorporated Areas).
	Approximately 1,990 feet downstream of Charlotte Hwy ...	+720	
Little Allison Creek Tributary 1	At the confluence of Little Allison Creek	+619	York County (Unincorporated Areas).
	Approximately 840 feet upstream of Tirzah Road Extension.	+652	
Little Allison Creek Tributary 2	At the confluence of Little Allison Creek	+602	York County (Unincorporated Areas).
	Approximately 50 feet downstream of Harper Road	+621	
Little Dutchman Tributary 1A	Just upstream of Ebinport Road	+572	City of Rock Hill.
	Approximately 205 feet upstream of Roundtree Circle	+587	
Little Turkey Creek	At the confluence with Turkey Creek	+420	York County (Unincorporated Areas).
	Approximately 4,120 feet upstream of Garvin Road	+511	
Little Turkey Creek Tributary 1	At the confluence with Little Turkey Creek	+572	York County (Unincorporated Areas).
	Approximately 2,790 feet upstream of the confluence with Little Turkey Creek.	+600	
Love Creek	At the confluence with South Fork Fishing Creek	+534	York County (Unincorporated Areas), Town of McConnells.
	Approximately 1,690 feet upstream of McConnells Hwy	+617	
Love Creek Tributary 1	At the confluence with Love Creek	+561	York County (Unincorporated Areas).
	Approximately 100 feet downstream of McConnells Hwy ..	+617	
Loves Creek	At the confluence with Bullock Creek	+436	York County (Unincorporated Areas), Town of Hickory Grove.
	Just downstream of Smith Street	+620	
Loves Creek Tributary 1	At the confluence with Loves Creek	+510	York County (Unincorporated Areas).
	Approximately 100 feet upstream of Howells Ferry Road ..	+552	
Loves Creek Tributary 2	At the confluence with Loves Creek	+493	York County (Unincorporated Areas).
	Approximately 2,630 feet upstream of Howells Ferry Road	+516	
Manchester Creek	Approximately 790 feet downstream of the confluence of Manchester Creek Tributary 1.	+515	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 1,390 feet upstream of Mt. Gallant Road East.	+549	
Manchester Creek Tributary 1 ..	At the confluence with Manchester Creek	+518	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 2,110 feet upstream of David Lyle Boulevard.	+531	
Manchester Creek Tributary 1 ..	Approximately 1,855 feet upstream of Evelyn Street	+548	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 3,195 feet upstream of Evelyn Street	+561	
Manchester Creek Tributary 2 ..	Approximately 2,260 feet upstream of Poe Street	+609	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 3,750 feet upstream of Poe Street	+628	
Manchester Creek Tributary 3 ..	Approximately 250 feet downstream of Eastwood Drive	+604	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 50 feet downstream of Pearl Street	+609	
McClures Branch	At the confluence with Little Turkey Creek	+455	York County (Unincorporated Areas).
	Approximately 4,390 feet upstream of the confluence of McClures Branch Tributary 1.	+545	
McClures Branch Tributary 1	At the confluence of McClures Branch	+509	York County (Unincorporated Areas).
	Approximately 2,560 feet upstream of the confluence of McClures Branch.	+528	
Mill Creek	At the confluence with Lake Wylie	+570	York County (Unincorporated Areas).
	Approximately 410 feet upstream of Riddle Mill Road	+656	
Mill Creek Tributary 1	At the confluence with Mill Creek	+379	York County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1,360 feet downstream of Valley View Drive Road.	+593	
Mill Creek Tributary 2	At the confluence with Mill Creek	+595	York County (Unincorporated Areas).
	Approximately 410 feet northwest of the intersection of Shagbark Land and Pine Lake Road.	+631	
Mitchell Branch	At the confluence of Bullock Creek	+448	York County (Unincorporated Areas).
	Approximately 6,370 feet upstream of Sherer Road	+587	
Mooneys Hill Branch	At the confluence with Catawba River	+500	York County (Unincorporated Areas), Town of Fort Mill.
	Approximately 1,045 feet downstream of Spratts Branch	+573	
Mooneys Hill Branch Tributary 1.	At the confluence of Mooneys Hill Branch	+500	York County (Unincorporated Areas).
	Approximately 2,875 feet upstream of the confluence with Mooneys Hill Branch.	+537	
Morris Branch	At the confluence with Big Allison Creek	+646	York County (Unincorporated Areas).
	Approximately 3,810 feet upstream of Smith Road	+688	
Mud Creek	At the confluence with Broad River	+448	York County (Unincorporated Areas).
	Approximately 100 feet upstream of Martin Road	+526	
Neelys Creek	Approximately 6,330 feet downstream of Pitts Road	+506	York County (Unincorporated Areas).
	Approximately 180 feet upstream of Hovis Road	+629	
Palmer Branch	At the confluence with Rainey Branch	+406	York County (Unincorporated Areas).
	Approximately 5,120 feet upstream of the confluence with Rainey Branch.	+417	
Plexico Branch	At the confluence with Bullock Creek	+444	York County (Unincorporated Areas).
	Approximately 5,620 feet upstream of Hoodtown Road	+513	
Rainey Branch	Approximately 2,200 feet downstream of the confluence of Palmer Branch.	+392	York County (Unincorporated Areas).
	Approximately 6,070 feet upstream of the confluence of Rainey Branch Tributary 1.	+485	
Rainey Branch Tributary 1	At the confluence with Rainey Branch	+420	York County (Unincorporated Areas).
	Approximately 2,040 feet upstream of the confluence with Rainey Branch.	+433	
Rock Branch	At the confluence with Big Allison Creek	+596	York County (Unincorporated Areas).
	Approximately 300 feet upstream of Lincoln Road	+635	
Rocky Branch	At the confluence with Bullock Creek	+543	York County (Unincorporated Areas).
	Approximately 5,030 feet upstream of Turner Road	+686	
Rocky Branch Tributary 1	At the confluence with Rocky Branch	+558	York County (Unincorporated Areas).
	Approximately 3,530 feet upstream of the confluence with Rocky Branch.	+601	
Ross Branch	At the confluence with Turkey Creek	+542	York County (Unincorporated Areas).
	Approximately 4,460 feet upstream of Longleaf Road	+636	
Ross Branch Tributary	At the confluence with Ross Branch	+602	York County (Unincorporated Areas).
	Approximately 8,030 feet upstream of the confluence with Ross Branch.	+723	
Ross Branch Tributary 1	At the confluence with Ross Branch	+626	York County (Unincorporated Areas).
	Approximately 3,660 feet upstream of the confluence with Ross Branch.	+642	
Ross Branch Tributary 3	At the confluence with Ross Branch	+615	York County (Unincorporated Areas).
	Approximately 2,180 feet upstream of Fleetwood Road	+703	
Ross Branch Tributary 4	At the confluence with Ross Branch	+606	York County (Unincorporated Areas).
	Approximately 720 feet upstream of Sharon Road	+621	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Rum Branch	Approximately 1,510 feet downstream of Antler Drive	+508	York County (Unincorporated Areas).
	Approximately 200 feet downstream of Neelys Creek Road.	+590	
Rum Branch Tributary 1	At the confluence with Rum Branch	+551	York County (Unincorporated Areas).
	Approximately 1,050 feet southwest of the intersect of Brer Rabbit and Carrie Estates Drive.	+597	
Rum Branch Tributary 2	At the confluence with Rum Branch Tributary 1	+551	York County (Unincorporated Areas).
	Approximately 1,790 feet upstream of the Railroad crossing.	+589	
Silver Creek	At the confluence with Buck Horn Creek	+508	York County (Unincorporated Areas).
	Approximately 5,140 feet upstream of Sierra Road	+656	
Six Mile Creek	At the confluence with Catawba River	+478	York County (Unincorporated Areas).
	Approximately 1,350 feet downstream of George Dunn Road.	+494	
Six Mile Creek Tributary 2	At the confluence of Six Mile Creek	+481	York County (Unincorporated Areas).
	Approximately 2,460 feet upstream of the confluence with Six Mile Creek.	+487	
South Fork Crowder Creek	Approximately 3,360 feet downstream of Lloyd Wright Road.	+665	York County (Unincorporated Areas).
	Approximately 720 feet upstream of Battleground Road	+778	
South Fork Crowder Creek Tributary 1.	At the confluence with South Fork Crowders Creek	+677	York County (Unincorporated Areas).
	Approximately 2,030 feet upstream of the confluence with South Fork Crowders Creek.	+706	
South Fork Crowder Creek Tributary 2.	At the confluence with South Fork Crowders Creek	+688	York County (Unincorporated Areas).
	Approximately 410 feet downstream of Whiteside Road	+708	
South Fork Fishing Creek	Approximately 3,210 feet downstream of the confluence of South Fishing Creek Tributary 1.	+519	York County (Unincorporated Areas).
	Approximately 1,080 feet upstream of Brattonville Road	+634	
South Fork Fishing Creek Tributary 1.	At the confluence with South Fork Fishing Creek	+525	York County (Unincorporated Areas).
	Approximately 4,350 feet upstream of Chappell Road East	+543	
South Fork Fishing Creek Tributary 2.	At the confluence with South Fork Fishing Creek	+525	York County (Unincorporated Areas).
	Approximately 4,790 feet upstream of the confluence with South Fork Fishing Creek.	+545	
South Fork Fishing Creek Tributary 3.	At the confluence with South Fork Fishing Creek	+548	York County (Unincorporated Areas).
	Approximately 2,380 feet upstream of the confluence with South Fork Road.	+571	
South Fork Fishing Creek Tributary 4.	At the confluence with South Fork Fishing Creek	+558	York County (Unincorporated Areas).
	Approximately 2,450 feet upstream of the confluence with South Fork Fishing Creek.	+583	
South Fork Fishing Creek Tributary 5.	Approximately 3,570 feet downstream of Chappell Road East.	+516	York County (Unincorporated Areas).
	Approximately 2,230 feet downstream of Chappell Road East.	+517	
South Fork Fishing Creek Tributary 6.	Just upstream of Chappell Road East	+513	York County (Unincorporated Areas).
	Approximately 2,800 feet downstream of Border Road West.	+525	
Stoney Fork	At the confluence of Fishing Creek	+495	York County (Unincorporated Areas).
	Approximately 5,740 feet upstream of Moore Road	+656	
Stoney Fork Tributary 1	At the confluence of Stoney Fork	+501	York County (Unincorporated Areas).
	Approximately 3,000 feet upstream of Williamson Road	+535	
Stoney Fork Tributary 2	At the confluence of Stoney Fork	+523	York County (Unincorporated Areas).
	Approximately 2,200 feet upstream of Ogden Road	+634	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Stoney Fork Tributary 3	At the confluence of Stoney Fork	+551	York County (Unincorporated Areas).
	Approximately 5,290 feet upstream of the confluence with Stoney Fork.	+580	
Stoney Fork Tributary 4	At the confluence of Stoney Fork	+563	York County (Unincorporated Areas).
	Approximately 2,370 feet upstream of Faires Road	+605	
Sugar Creek	At the confluence with the Catawba River	+487	York County (Unincorporated Areas).
	At the Railroad Bridge at the York County, SC and Mecklenburg County, NC county line.	+538	
Sugar Creek Tributary 2	At the confluence with Sugar Creek	+496	York County (Unincorporated Areas).
	Approximately 770 feet southeast of the intersection of Bobys Bridge Road and Whites Road.	+627	
Susybole Creek	Approximately 3,600 feet downstream of the confluence with Carter Branch.	+455	York County (Unincorporated Areas).
	Approximately 9,180 feet upstream of Burris Road South	+506	
Taylors Creek	At the confluence with Fishing Creek	+502	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 335 feet downstream of Firetower Road	+569	
Taylors Creek Tributary 1	At the confluence with Taylors Creek	+521	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 210 feet downstream of Glenarden Avenue	+569	
Taylors Creek Tributary 2	At the confluence with Taylors Creek	+535	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 105 feet downstream of Albright Road	+549	
Taylors Creek Tributary 3	At the confluence with Taylors Creek	+548	York County (Unincorporated Areas).
	Approximately 1,410 feet upstream of Taylors Creek Road	+586	
Thompson Branch	At the confluence with Bullock Creek	+466	York County (Unincorporated Areas).
	Approximately 2,190 feet upstream of Walnut Street Extension.	+513	
Thompson Branch Tributary 1	At the confluence with Thompson Branch	+473	York County (Unincorporated Areas).
	Approximately 1,130 feet downstream of Sawmill Road	+489	
Tools Fork Creek	Approximately 750 feet upstream of York Hwy	+583	York County (Unincorporated Areas).
	Approximately 1,950 feet upstream of Mt. Gallant Road West.	+615	
Tools Fork Creek Tributary	At the confluence with Tools Fork Creek	+581	York County (Unincorporated Areas).
	Approximately 1,390 feet downstream of Old York Road	+636	
Tools Fork Creek Tributary 2	At the confluence with Tools Fork Creek	+597	York County (Unincorporated Areas).
	Approximately 230 feet downstream of Tirzah Road	+608	
Tools Fork Creek Tributary 3	At the confluence with Tools Fork Creek Tributary 1	+583	York County (Unincorporated Areas).
	Approximately 155 feet downstream of Pine Grove Court	+599	
Turkey Creek	Approximately 1,390 feet downstream of the confluence of Blue Branch.	+397	York County (Unincorporated Areas), City of York.
	Approximately 5,410 feet upstream of Springlake Road	+694	
Turkey Creek Tributary 1	At the confluence with Turkey Creek	+581	York County (Unincorporated Areas).
	Approximately 1,075 feet upstream of the confluence with Turkey Creek.	+636	
Turkey Creek Tributary 2	At the confluence with Turkey Creek	+668	York County (Unincorporated Areas).
	Approximately 2,845 feet upstream of James Harvey Road.	+707	
Turkey Creek Tributary 3	At the confluence with Turkey Creek	+661	York County (Unincorporated Areas).
	Approximately 475 feet upstream of the confluence with Turkey Creek.	+680	
Turkey Creek Tributary 4	At the confluence with Turkey Creek	+653	York County (Unincorporated Areas).
	Approximately 105 feet upstream of Tanager Drive	+666	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Turkey Creek Tributary 5	At the confluence with Turkey Creek	+649	York County (Unincorporated Areas).
	Approximately 1,005 feet upstream of the confluence with Turkey Creek.	+671	
Turkey Creek Tributary 6	At the confluence with Turkey Creek	+617	York County (Unincorporated Areas).
	Approximately 1,660 feet upstream of the confluence with Turkey Creek.	+656	
Turkey Creek Tributary 7	At the confluence with Turkey Creek	+477	York County (Unincorporated Areas).
	Approximately 5,130 feet upstream of the confluence with Turkey Creek.	+572	
Turkey Creek Tributary 8	At the confluence with Turkey Creek	+437	York County (Unincorporated Areas).
	Approximately 6,360 feet upstream of the confluence with Turkey Creek.	+477	
Turkey Creek Tributary 9	At the confluence with Turkey Creek Tributary 8	+436	York County (Unincorporated Areas).
	Approximately 1,760 feet upstream of the confluence with Turkey Creek Tributary 8.	+452	
Turkey Creek Tributary 10	At the confluence with Turkey Creek	+427	York County (Unincorporated Areas).
	Approximately 4,510 feet upstream of Feemster Road	+481	
Turkey Creek Tributary 11	At the confluence with Turkey Creek	+408	York County (Unincorporated Areas).
	Approximately 9,360 feet upstream of the confluence with Turkey Creek.	+447	
Turkey Creek Tributary 12	At the confluence with Turkey Creek	+407	York County (Unincorporated Areas).
	Approximately 300 feet downstream of Burris Road North	+444	
Turkey Creek Tributary 13	At the confluence with Turkey Creek	+400	York County (Unincorporated Areas).
	Approximately 6,690 feet upstream of the confluence with Turkey Creek.	+443	
Turkey Creek Tributary 14	At the confluence with Turkey Creek	+399	York County (Unincorporated Areas).
	Approximately 6,450 feet upstream of the confluence with Turkey Creek.	+426	
Walker Branch	At the confluence with Calabash Branch	+637	York County (Unincorporated Areas), Town of Clover.
	Approximately 3,530 feet upstream of St. Paul Church Road.	+727	
Wildcat Creek	At the confluence with Fishing Creek	+520	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 675 feet downstream of Ogden Road	+532	
Wildcat Creek	At McConnells Hwy	+558	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 890 feet upstream of Heckle Boulevard	+680	
Wildcat Creek Tributary I	At the confluence with Wildcat Creek	+544	York County (Unincorporated Areas, City of Rock Hill.
	Approximately 330 feet downstream of the confluence with Wildcat Creek Tributary 1A.	+574	
Wildcat Creek Tributary 1–A	At the confluence with Wildcat Creek Tributary 1	+575	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 75 feet downstream of Finley Road	+590	
Wildcat Creek Tributary 2	At the confluence with Wildcat Creek	+549	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 1,495 feet downstream of McConnells Hwy	+556	
Wildcat Creek Tributary 3	At the confluence with Wildcat Creek	+547	York County (Unincorporated Areas).
	Approximately 355 feet upstream of Reese Roach Road	+593	
Wildcat Creek Tributary 4	At the confluence with Wildcat Creek	+558	York County (Unincorporated Areas), City of Rock Hill.
	Approximately 560 feet downstream of Herlong Avenue South.	+606	
Wildcat Creek Tributary 5	At the confluence with Wildcat Creek	+577	York County (Unincorporated Areas).
	Approximately 510 feet upstream of Hollis Lakes Road	+632	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Wolf Creek	At the confluence with Kings Creek	+456	City of Rock Hill.
	At the Cherokee/York County Boundary	+640	
Wright Creek	At the confluence with Little Turkey Creek	+496	York County (Unincorporated Areas).
	Approximately 680 feet upstream of the confluence with Lindsay Creek.	+558	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum.

ADDRESSES

Unincorporated Areas of York County

Maps are available for inspection at 6 South Congress Street, York, SC 29745.

Catawba Indian Nation

Maps are available for inspection at 996 Avenue of the Nation, Rock Hill, SC 29730.

Town of Clover

Maps are available for inspection at 114 Bethel Street, Clover, SC 29710–0181.

Town of Fort Mill

Maps are available for inspection at 112 Confederate Street, Fort Mill, SC 29715–0159.

Town of Hickory Grove

Maps are available for inspection at 6001 Wylie Avenue, Hickory Grove, SC 29717–0126.

Town of McConnells

Maps are available for inspection at 4178 Chester HIghway, McConnells, SC 29726–0115.

City of Rock Hill

Maps are available for inspection at 155 Johnson Street, Rock Hill, SC 29731–1706.

City of Tega Cay

Maps are available for inspection at 7000 Tega Cay Drive, Tega Cay, SC 29708–3399.

City of York

Maps are available for inspection at 10 North Roosevelt Street, York, SC 29745–0500.

Bell County, Texas and Incorporated Areas
Docket No.: FEMA–B–7709

Acorn Creek	Approximately 300 feet upstream from confluence with Trimmier Creek.	+678	City of Killeen.
	Approximately 1.33 miles from Stagecoach Road	+807	
Caprice Ditch (Formerly Site Tributary 7).	Confluence with Nolan Creek	+740	City of Harker Heights, City of Killeen, Bell County (Unincorporated Areas).
	Intersection with Schwald Road	+854	
Chaparral Creek	Approximately 300 feet upstream from the confluence with Trimmier Creek.	+727	City of Killeen, Bell County (Unincorporated Areas).
	Approximately 960 feet upstream from Chaparral Road	+839	
Edgefield Creek	Approximately 936 feet upstream from the confluence with South Nolan Creek.	+912	City of Killeen.
	Approximately 700 feet upstream from Edgefield Street	+944	
Embers Creek	Confluence with Trimmier Creek	+774	City of Killeen.
	Approximately 2,060 feet upstream from Stagecoach Road.	+807	
Fryers Creek	Approximately 100 feet upstream from Waters Dairy Road	+590	City of Temple.
	Approximately 500 feet downstream from State Highway 363.	+622	
Harker Heights Tributary 4	Confluence with Nolan Creek	+746	City of Herker Heights, City of Killeen.
	Approximately 300 feet upstream from Stillwood Drive	+773	
Hilliard Creek	Confluence with Long Branch Ditch	+801	City of Killeen.
	Approximately 440 feet upstream from Transverse Drive	+839	
Hilliard Tributary 1	Confluence with Hilliard Creek	+830	City of Killeen.
	Approximately 1,300 feet upstream from confluence with Hilliard Creek.	+845	
Hog Pen Creek	Approximately 1,000 feet upstream from Poison Oak Road.	+547	City of Temple.
	Approximately 1,150 feet upstream from FM2305	+619	
Hog Pen Creek Tributary 1	Confluence with Hog Pen Creek	+575	City of Temple.
	Approximately 1,500 feet upstream from the confluence with Hog Pen Creek.	+592	
Hog Pen Creek Tributary 2	Confluence with Hog Pen Creek	+561	City of Temple.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1,000 feet upstream from Tarver Drive	+596	
Liberty Ditch (Formerly Nolan Creek Tributary 3).	Confluence with Nolan Creek	+783	City of Killeen.
	Approximately 740 feet upstream from Poage Avenue	+845	
Little Nolan Creek	Confluence with Nolan Creek	+751	City of Killeen.
	West Trimmier Drive	+908	
Long Branch Ditch (Formerly Long Branch).	Confluence with Nolan Creek	+765	City of Killeen.
	County Boundary	+827	
North Reese Creek	Approximately 625 feet downstream from Reese Creek Highway.	+873	City of Killeen, Bell Conty (Unicorporated Areas).
	Approximately 4,125 feet upstream from Laura Drive	+939	
North Reese Creek Tributary 1	Approximately 400 feet downstream from Maxdale Street	+885	City of Killeen, Bell County (Unincorporated Areas).
	Aproximately 920 feet upstream from Bunny Trail	+953	
North Reese Creek Tributary 1A.	Approximately 178 feet upstream from confluence with North Reese Creek Tributary 1.	+944	Bell County (Unincorporated Areas).
	Approximately 1,638 feet upstream from the confluence with North Reese Creek Tributary 1.	+965	
North Reese Creek Tributary 3	Approximately 1,630 feet upstream from confluence with North Reese Creek.	+867	City of Killeen, Bell County (Unincorporated Areas).
	Approximately 2,700 feet upstream from Stagecoach Road.	+916	
.			
North Reese Creek Tributary 4	Approximately 960 feet upstream from confluence with North Reese Creek.	+877	Ciy of Killeen.
	Approximately 1,620 feet upstream from confluence with North Reese Creek.	+890	
Old Florence Ditch (Formerly Little Nolan Creek Tributary 2).	Confluence with Little Nolan Creek	+825	City of Killeen.
	Approximately 220 feet upstream from Trimmier Road	+897	
Rainforest Creek	Approximately 515 feet upstream from confluence with South Nolan Creek.	+901	City of Killeen.
	Approximately 1,740 feet upstream from Waterfall Road ...	+935	
Robinette Creek	Approximately 324 feet upstream from confluence with South Nolan Creek.	+935	City of Killeen.
	Approximately 920 feet upstream from Robinette Road	+949	
Rock Creek	Approximately 3,000 feet downstream from Chaparral Road.	+824	City of Killeen, Bell County (Unincorporated Areas).
	Approximately 3,500 feet upstream from Chaparral Road	+877	
Rock Creek Tributary 1	Approximately 268 feet upstream from confluence with Rock Creek.	+827	City of Killeen, Bell County (Unincorporated Areas).
	Approximately 1,740 feet upstream from Chaparral Road	+862	
Rock Creek Tributary 1A	Approximately 450 feet upstream from confluence with Rock Creek Tributary 1.	+835	Bell County (Unincorporated Areas).
	Approximately 1,140 feet upstream from dam	+856	
South Nolan Creek	Approximately 2,550 feet downstream from Watercrest Road.	+903	City of Killeen.
	Approximately 2,340 feet upstream from Stan Schlueter Road.	+981	
Steward Ditch (Formerly Nolan Creek Tributary 4).	Confluence with Nolan Creek	+803	City of Killeen.
	Approximately 1,360 feet upstream from Duncan Ave	+852	
Trimmier Creek	Approximately 630 feet downstream from confluence with Acorn Creek.	+686	City of Killeen.
	Approximately 2,900 feet upstream from Stagecoach Road.	+834	
Trimmier Road Ditch (Formerly Little Nolan Creek Tributary 1).	Confluence with Little Nolan Creek	+800	City of Killeen.
	Approximately 2,400 feet upstream from Old FM 440	+965	
Yowell Creek	Approximately 5,180 feet upstream from confluence with Chaparral Creek.	+763	City of Killeen.
	Approximately 1,250 feet upstream from Featherline Road	+878	
Yowell Creek Tributary	Confluence with Yowell Creek	+788	City of Killeen.
	Approximately 1,250 feet upstream from Featherline Road	+863	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Harker Heights
Maps are available for inspection at City Hall, 305 Miller's Crossing, Harker Heights, TX 76548.

City of Killeen
Maps are available for inspection at City Hall, 101 North College Street, Killeen, TX 76540.

City of Temple
Maps are available for inspection at City Hall, 2 North Main Street, Temple, TX 76501.

Bell County (Unincorporated Areas)
Maps are available for inspection at Bell County Courthouse, 101 E. Central Ave., Belton, TX 76513.

Rockwall County, Texas and Incorporated Areas
Docket No: FEMA–B–7704

Berry Creek	Approximately 3,000 feet downstream from State Highway 205.	+487	City of Mclendon-Chisholm.
	Approximately 1,250 feet upstream from the confluence with Berry Creek Tributary 1.	+499	
Bois d'Arc	Confluence with Sabine Creek	+527	City of Royse City.
	Intersection with Highway 66 (County Boundary)	+535	
Brushy Creek	Approximately 200 feet downstream from Klutts Drive	+485	City of Mclendon-Chisholm.
	Approximately 4,200 feet upstream from Highway 276 (WS SCS Site 1a Dam Spillway).	+565	City of Rockwall.
Buffalo Creek	Approximately 2,000 feet downstream from King Street (County Boundary).	+432	City of Heath.
	Approximately 1,500 feet upstream from T.L. Townsend Drive.	+541	City of Rockwall.
Buffalo Creek Tributary 1	Approximately 1,000 feet upstream from Highway 276	+531	City of Rockwall.
	At railroad tracks	+564	
Buffalo Creek Tributary 1.1	Confluence with Buffalo Creek Tributary 1	+548	City of Rockwall.
	Intersection with Alpha Drive	+553	
Buffalo Creek Tributary 1.2	Confluence with Buffalo Creek Tributary I	+551	City of Rockwall.
	Intersection with Industrial Blvd	+558	
Camp Creek	Approximately 150 feet downstream from the confluence with Camp Creek Tributary 1.	+432	City of Fate, Rockwall County (Unincorporated Areas).
	Approximately 1,500 feet downstream from Riding Club Road.	+565	
Camp Creek Tributary 1	Confluence with Camp Creek	+514	City of Fate, Rockwall County (Unincorporated Areas).
	Approximately 3,000 feet upstream from WS SCS Site 3f Dam.	+514	City of Fate, Rockwall County (Unincorporated Areas).
Lake Ray Hubbard	Lake Ray Hubbard	+437	City of Heath, City of Rockwall, Rockwall County (Unincorporated Areas).
Long Branch	Approximately 300 feet downstream from the confluence with Long Branch Tributary 15.	+439	City of Heath.
	Approximately 1,000 feet upstream from McDonald Road	+457	City of Mclendon-Chisholm.
Parker Creek	Approximately 250 feet upstream from the confluence with Klutts Branch.	+498	City of Fate, City of Royse City, Unincorporated Areas of Rockwall County.
	Approximately 2,000 feet downstream from the confluence with Parker Creek Tributary 10.	+559	
Parker Creek Tributary 1	Confluence with Parker Creek	+528	City of Fate.
	Approximately 1,000 feet upstream from Highway 66	+577	City of Royse City.
Parker Creek Tributary 2	Confluence with Parker Creek Tributary 1	+551	City of Fate.
	Approximately 1,500 feet upstream from Highway 66	+580	
Pond Branch	Approximately 3,500 feet upstream from the confluence with Sabine Creek.	+517	City of Royse City.
	Approximately 100 feet upstream from Church Street	+536	
Rush Creek	Approximately 750 feet upstream from Hubbard Drive	+437	City of Heath.
	Approximately 500 feet upstream from FM 740 Road	+507	
Sabine Creek	Confluence with Pond Creek	+514	City of Royse City.
	County Line Road	+528	
Squabble Creek	Golf Course Dam 1	+439	City of Rockwall.
	Approximately 2,000 feet upstream from Highway 205	+473	
Yankee Creek	Approximately 1,750 feet downstream from Terry Lane	+441	City of Heath.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1,250 feet downstream from the confluence with Yankee Creek Tributary 1.	+496	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Fate
Maps are available for inspection at 105 Fate Main Place, Fate, TX 75132.

City of Heath
Maps are available for inspection at Heath City Hall, 200 Laurence Drive, Heath, TX 75032.

City of Mclendon-Chisholm
Maps are available for inspection at 1248 South Hwy 205, Rockwall, TX 75032.

City of Rockwall
Maps are available for inspection at City Hall, 205 East Rusk, Rockwall, TX 75087.

City of Royse City
Maps are available for inspection at City Hall, 205 East Rusk, Rockwall, TX 75087.

Rockwall County (Unincorporated Areas)
Maps are available for inspection at Rockwall Government Building, 1101 Ridge Road, Rockwall, TX 75087.

Smith County, Texas, and Incorporated Areas
Docket No.: FEMA–B–7720

Blackhawk Creek	Approximately 2,000 feet downstream of intersection with Blackjack Rd.	+332	City of Whitehouse (Smith County) Unincorporated Areas.
	Approximately 1,750 feet upstream of intersection with FM 346 E.	+483	
Blackhawk Creek Tributary 1	Confluence with Blackhawk Creek	+383	City of Whitehouse.
	Approximately 250 feet upstream of Hagan Rd intersection.	+419	
Blackhawk Creek Tributary 2	Confluence with Blackhawk Creek	+418	City of Whitehouse.
	Approximately 2,000 feet upstream of intersection with CR 2319.	+460	
Hill Creek	Approximately 3,500 feet from intersection with Troup Highway.	+379	City of Whitehouse (Smith County) Unincorporated Areas.
	Approximately 2,500 feet downstream of intersection with Bascom Rd.	+465	
Horsepen Branch	Approximately 8,000 feet downstream of confluence with Kickapoo Creek.	+392	City of Troup.
	Approximately 1,100 feet downstream of confluence with Kickapoo Creek.	+411	
Mud Creek	Approximately 7,000 feet downstream from intersection with Old Tyler Rd. (County Line).	+315	(Smith County) Unincorporated Areas.
	Approximately 140 feet upstream from intersection with Troup Highway.	+333	
Prairie Creek South	Approximately 1,750 feet downstream of intersection with Old Omen Rd.	+382	(Smith County) Unincorporated Areas.
	1,750 feet upstream of intersection with Henderson Hwy.	+422	New Chapel Hill.
Prairie Creek Tributary 1	Confluence with Prairie Creek South	+391	(Smith County) Unincorporated Areas.
	1,500 feet upstream from Dam	+451	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Troup
Maps are available for inspection at 100 N. Broadway, Tyler, TX 75702.

City of Whitehouse
Maps are available for inspection at 100 N. Broadway, Tyler, TX 75702.

New Chapel Hill
Maps are available for inspection at 100 N. Broadway, Tyler, TX 75702.

Unincorporated Areas of Smith County
Maps are available for inspection at 100 N. Broadway, Tyler, TX 75702.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Milwaukee County, Wisconsin, and Incorporated Areas Docket No.: FEMA–B–7707			
Caledonia Branch	Confluence with Crayfish Creek	*666	City of Oak Creek.
	Downstream side of County Line Road	*672	
Caledonia Branch Tributary CB1.	Confluence with Caledonia Branch	*667	City of Oak Creek.
	Approximately 0.6 miles upstream of Elm Road	*687	
Caledonia Branch Tributary CB2.	Confluence with Caledonia Branch	*670	City of Oak Creek.
	Upstream side of 10th Avenue	*672	
Caledonia Branch Tributary CB3.	Upstream side of County Line Road	*676	City of Oak Creek.
	Approximately 160 feet upstream of State Highway 32	*688	
Crayfish Creek	Upstream side of County Line Road	*666	City of Oak Creek.
	Downstream side of Oakwood Road	*668	
Crayfish Creek Tributary C1	Confluence with West Branch Crayfish Creek	*668	City of Oak Creek.
	Approximately 800 feet upstream of Shepard Avenue	*688	
Crayfish Creek Tributary C2	Confluence with West Branch Crayfish Creek	*670	City of Oak Creek.
	Approximately 1,500 feet upstream of Shepard Avenue	*701	
Crayfish Creek Tributary C3	Confluence with Crayfish Creek	*668	City of Oak Creek.
	Approximately 0.9 miles from Oakwood Road	*677	
Crayfish Creek Tributary C3A	Confluence with Crayfish Creek Tributary C3	*669	City of Oak Creek.
	Approximately 0.5 miles upstream of Confluence with Crayfish Creek Tributary C3.	*672	
Lake Michigan Tributary L1	Approximately 380 feet upstream of mouth to Lake Michigan.	*643	City of Oak Creek.
	Approximately 0.4 miles upstream of 5th Avenue	*677	
Lake Michigan Tributary L5	Approximately 510 feet upstream of mouth to Lake Michigan.	*654	City of Oak Creek.
	Approximately 0.4 miles upstream of mouth to Lake Michigan.	*691	
Legend Creek	Confluence with the Root River	*695	City of Franklin.
	Upstream side of U.S. Highway 45	*800	
Lincoln Creek	Confluence with the Milwaukee River	*624	City of Glendale, City of Milwaukee.
	Upstream side of Teutonia Avenue	*628	
	Upstream of Mill Road	*687	
	Upstream of Good Hope Road	*692	
Menomonee River	240 feet upstream of Canal Street	*589	City of Milwaukee, City of Wauwatosa.
	Upstream side of South 35th Street	*598	
	Upstream side of Chicago & Northwestern Railroad	*608	
	Upstream side of U.S. Highway 41	*624	
	Upstream side of Harwood Avenue Pedestrian Bridge	*658	
Milwaukee River	Upstream side of Cherry Street	*584	City of Milwaukee, Village of Brown Deer, Village of River Hills, Village of Shorewood.
	Downstream side of North Avenue	*597	
	Upstream side of Capitol Drive	*605	
	Upstream side of Good Hope Road	*640	
Mitchell Field Drainage Ditch	Confluence with Oak Creek	*660	City of Milwaukee, City of Oak Creek.
	Approximately 0.5 miles upstream of Howell Avenue	*711	
Mitchell Field Drainage Ditch Tributary M1.	Confluence with Mitchell Field Drainage Ditch	*672	City of Oak Creek.
	Approximately 0.5 miles upstream of Howell Avenue	*713	
Mitchell Field Drainage Ditch Tributary M4.	Confluence with Mitchell Field Drainage Ditch	*666	City of Oak Creek.
	Approximately 0.4 miles upstream of confluence with Mitchell Field Drainage Ditch.	*683	
North Branch Oak Creek	Confluence with Oak Creek	*682	City of Milwaukee, City of Oak Creek.
	Downstream side of Marquette Avenue	*713	
	Approximately 630 feet upstream of Interstate 94	*742	
North Branch Oak Creek Tributary N2.	Confluence with North Branch Oak Creek	*710	City of Milwaukee, City of Oak Creek.
	Approximately 125 feet upstream of 16th Street	*743	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
North Branch Oak Creek Tributary N4.	Confluence with North Branch Oak Creek	*716	City of Oak Creek.
	Downstream side of Interstate 94	*728	
North Branch Oak Creek Tributary N5.	Confluence with North Branch Oak Creek	*710	City of Oak Creek.
	Approximately 0.9 miles upstream of Interstate 94	*757	
North Branch Oak Creek Tributary N7.	Confluence with North Branch Oak Creek	*704	City of Oak Creek.
	Approximately 0.4 miles upstream of 20th Street-Drexel Avenue.	*721	
North Branch Oak Creek Tributary N7A.	Confluence with North Branch Oak Creek Tributary N7	*713	City of Oak Creek.
	Approximately 590 feet upstream of 20th Street	*735	
Oak Creek	Upstream side of 2nd Oak Creek Parkway Crossing	*603	City of Franklin, City of Oak Creek.
	Upstream side of Southland Drive	*735	
	Approximately 1,360 feet upstream of Puetz Road	*753	
Oak Creek Tributary O16	Upstream side of Pennsylvania Avenue	*666	City of Oak Creek.
	Approximately 0.5 miles upstream of Forest Lane	*681	
Oak Creek Tributary O17	Upstream side of Pennsylvania Avenue	*663	*City of Oak Creek.
	Approximately 0.9 miles upstream of Pennsylvania Avenue.	*676	
Oak Creek Tributary O19	Confluence with Oak Creek Tributary O19A	*664	City of Oak Creek.
	Approximately 0.6 miles upstream of confluence with Oak Creek Tributary O19A.	*684	
Oak Creek Tributary O19A	Confluence with Oak Creek	*663	City of Oak Creek.
	Approximately 1,500 feet upstream of Puetz Road	*673	
Oak Creek Tributary O20	Confluence with Oak Creek	661	*City of Oak Creek.
	Approximately 0.5 miles upstream of confluence with Oak Creek.	*674	
Oak Creek Tributary O8	Confluence with Oak Creek	*674	City of Oak Creek.
	Downstream side of State Highway 38	*689	
Root River	500 feet downstream of Nicholson Road	*666	City of Oak Creek.
	Upstream side of Interstate 94	*676	
Root River Tributary R2	Approximately 1.2 miles upstream of confluence with the Root River.	*672	City of Oak Creek.
	Approximately 0.4 miles upstream of Oakwood Avenue	*691	
Root River Tributary R3	Confluence with Root River Tributary R2	*691	City of Oak Creek.
	Approximately 185 feet upstream of 13th Street	*698	
Root River Tributary R5	Confluence with the Root River	*668	City of Oak Creek.
	Downstream side of Elms Road	*696	
South Branch Underwood Creek.	At Waukesha County Boundary	*723	City of Wauwatosa, City of West Allis.
	Downstream side of Bradley Road	*729	
Southbranch Creek	Upstream side of Green Bay Court	*651	City of Milwaukee, Village of Brown Deer.
	Downstream side of Bradley Road	*683	
Southland Creek	Confluence with North Branch Oak Creek	*694	City of Oak Creek.
	Approximately 125 feet upstream of 27th Street	*736	
Underwood Creek	Confluence with the Menomonee River 1,120 feet upstream of 115th Street.	*678	City of Wauwatosa.
		*718	
Unnamed Tributary No. 1 to Oak Creek.	Confluence with Oak Creek	*737	City of Franklin.
	Approximately 60 feet upstream of Puetz Road	*755	
Unmaned Tributary No. 1 to Southland Creek.	Confluence with Southland Creek	*702	City of Oak Creek.
	Approximately 60 feet upstream of Puetz Road	*725	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Franklin
Maps are available for inspection at 9229 W Loomis Road, Franklin, WI.

City of Glendale
Maps are available for inspection at 5909 N Milwaukee River Parkway, Glendale, WI.

City of Milwaukee

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

Maps are available for inspection at 200 E Wells Street, Milwaukee, WI.

City of Oak Creek
Maps are available for inspection at 8640 S Howell Avenue, Oak Creek, WI.

City of South Milwaukee
Maps are available for inspection at 2424 15th Avenue, South Milwaukee, WI.

City of Wauwatosa
Maps are available for inspection at 7725 W North Avenue, Wauwatosa, WI.

City of West Allis
Maps are available for inspection at 7525 W Greenfield Avenue, West Allis, WI.

Village of Brown Deer
Maps are available for inspection at 4800 W Green Brook Drive, Brown Deer, WI.

Village of River Hills
Maps are available for inspection at 7650 N Pheasant Lane, River Hills, WI.

Village of Shorewood
Maps are available for inspection at 3930 N Murray Avenue, Shorewood, WI.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 8, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–8310 Filed 4–16–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–738; MB Docket No. 07–220; RM–11403]

Radio Broadcasting Services; Ash Fork and Paulden, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Sierra H Broadcasting, Inc., allots FM Channel 259A in lieu of vacant FM Channel 267A at Ash Fork, Arizona, and allots FM Channel 228C3 in lieu of vacant FM Channel 268C3 at Paulden, Arizona. Channel 259A can be allotted at Ash Fork, Arizona, in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 km (4.6 miles) northwest of Ash Fork at the following reference coordinates: 35–16–13 North Latitude and 112–32–31 West Longitude. Channel 228C3 can be allotted at Paulden, Arizona, in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.7 km (4.8 miles) west of Paulden at the following reference coordinates: 34–52–16 North Latitude and 112–33–00 West Longitude. Concurrence in the Paulden allotment by the Government of Mexico is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Mexican border. Although Mexican concurrence has been requested, notification has not been received. If a construction permit for Channel 228C3 at Paulden, Arizona, is granted prior to receipt of formal concurrence by the Mexican government, the authorization will include the following condition: ''Operation with the facilities specified herein for Paulden, Arizona, is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Mexico-United States FM Broadcast Agreement, or if specifically objected to by the Government of Mexico.''

DATES: Effective May 12, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 07–220, adopted March 26, 2008, and released March 28, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 267A and adding Channel 259A at Ash Fork, and by removing Channel 263C3 and adding Channel 228C3 at Paulden.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–8087 Filed 4–16–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–736; MB Docket No. 07–227; RM–11405]

Radio Broadcasting Services; Clayton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of North Texas Radio Group, L.P., licensee of Station KFYZ–FM, Channel 241A, Bennington, Oklahoma, the Audio Division grants the petition for rule making requesting the substitution of Channel 262A for vacant Channel 241A at Clayton, Oklahoma to accommodate a hybrid minor change application for Station KFYZ–FM at Bennington, Oklahoma. *See* File No. BPH–20070816ABS.

DATES: Effective May 12, 2008.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 07–227, adopted March 26, 2008, and released March 28, 2008. The *Notice of Proposed Rulemaking* proposed the substitution of Channel 262A for vacant Channel 241A at Clayton, Oklahoma. *See* 72 FR 63868, published November 13, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 241A and adding Channel 262A at Clayton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–8086 Filed 4–16–08; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 73, No. 75
Thursday, April 17, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[AMS–CN–07–0092; CN–08–001]

0581–AC80

User Fees for 2008 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to raise user fees for cotton producers for 2008 crop cotton classification services under the Cotton Statistics and Estimates Act. These user fees also are authorized under the Cotton Standards Act of 1923. The 2007 user fee for this classification service was $1.85 per bale. This proposal would raise the fee for the 2008 crop to $2 per bale. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

DATES: Comments must be received on or before May 2, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Darryl Earnest, Deputy Administrator, Cotton and Tobacco Programs, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *http://www.regulations.gov*. All comments should reference the docket number and the date and the page of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the above office in Room 2639—South Building, 1400 Independence Avenue, SW., Washington, DC. A copy of this notice may be found at: *http://www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton and Tobacco Programs, AMS, USDA, Room 2639–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *darryl.earnest@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The increase above the 2007 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2007 user fee for classification services was $1.85 per bale; the fee for the 2008 crop would be increased to $2.00 per bale; the 2008 crop is estimated at 14,000,000 bales).

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2007 crop, 19,033,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2006 crop of 47.3 cents per pound, 500 pound bales of cotton are worth an average of $236.50 each. The proposed user fee increase for classification services, $2.00 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–AC43.

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 2008.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.85 per bale during the 2007 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration and supervision. The fee structure for the 2007 crop year was incorporated under the authority of the Cotton Standards Act of 1923, by an interim final rule effective October 1, 2007 (72 FR 56242).

This proposed rule establishes the user fee charged to producers for HVI classification at $2.00 per bale during the 2008 harvest season.

The classification fees are based on the prevailing method of classification requested by producers during the previous year. HVI classing was the

prevailing method of cotton classification requested by producers in 2007. Therefore, the 2008 producers' user fee for classification service is based on the 2007 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237 which AMS also considers reasonable under the authority of the Cotton Standards Act of 1923. The 2007 base fee for HVI classification exclusive of adjustments, as provided by that Act, was $2.52 per bale. An increase of 3.06 percent, or 7 cents per bale, due to the implicit price deflator of the gross domestic product added to the $2.52 would result in a 2008 base fee of $2.59 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross *national* product has been replaced by gross *domestic* product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2008 crop is estimated at 14,000,000 bales. The 2008 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum decreased adjustment of 15 percent). This percentage factor amounts to a 39 cents per bale reduction and was subtracted from the 2008 base fee of $2.59 per bale, resulting in a fee of $2.20 per bale.

However, with a fee of $2.20 per bale, the projected operating reserve would be 31.6 percent. The 1987 Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $2.20 is reduced by 20 cents per bale, to $2.00 per bale, to provide an ending accumulated operating reserve for the fiscal year of not more than 25 percent of the projected cost of operating the program. This would establish the 2008 season fee at $2.00 per bale.

Accordingly, § 28.909, paragraph (b) would reflect the increase of the HVI classification fee to $2.00 per bale.

A 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per bale. The fee in § 28.910(b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the National database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 would increase to $2.00 per bale.

The fee for returning samples after classification in § 28.911 would remain at 50 cents per sample.

A 15-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective for the 2008 cotton crop on July 1, 2008.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 28 is proposed to be amended to read as follows:

PART 28—[AMENDED]

1. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 51–65; 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.00 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $2.00 per bale.

* * * * *

Dated: April 15, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–1148 Filed 4–15–08; 12:36 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2008–0211; Airspace Docket No. 08–AWP–3]

RIN 2120–AA66

Proposed Establishment of Class D Airspace; San Bernardino International Airport, San Bernardino, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice announces an extension of the comment period on a Notice of Proposed Rulemaking (NPRM) which proposes to establish Class D airspace at San Bernardino International Airport, San Bernardino, CA. This action is being taken in response to interest by several pilot groups and local airspace users working groups in the Los Angeles basin.

DATES: Comments must be received on or before May 14, 2008.

ADDRESSES: You may send comments by any of the following methods: Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments. Fax: 202–493–2251. Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours at the office of the Manager, System Support Group, Western Service Center, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, System Support Group, Western Service Center, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4532.

SUPPLEMENTARY INFORMATION:

Background

Docket No. FAA 2008–0211; Airspace Docket No. 08–AWP–3, published on March 14, 2008 (71 FR 13811) proposed to establish Class D airspace at San Bernardino International Airport, San Bernardino, CA. This action will extend the comment period closing date on that airspace docket from April 14, 2008 to May 14, 2008 to allow for an additional 30-day comment period.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Extension of Comment Period

The comment period closing date on Docket No. FAA 2008–0211; Airspace Docket No. 08–AWP–3 is hereby extended to May 14, 2008.

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389.

* * * * *

Issued in Seattle, Washington, on April 8, 2008.

Clark Desing,

Manager, System Support Group, Western Service Center.

[FR Doc. E8–8311 Filed 4–16–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0187; Airspace Docket No. 07–ASO–27]

Proposed Modification of Area Navigation Route Q–110 and Jet Route J–73; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to extend the length of Area Navigation (RNAV) route Q–110 and make a minor realignment of jet route J–73, in support of the Florida West Coast Airspace Redesign project. The extension of Q–110 would provide an RNAV route for use by aircraft transitioning between Miami Air Route Traffic Control Center (ARTCC) and Jacksonville ARTCC airspace. The extension would also assist aircraft in circumnavigating military airspace associated with the Avon Park Air Force Range. The realignment of J–73 would provide space for the Q–110 extension. The FAA is proposing this action to enhance the safe and the efficient use of the navigable airspace in the western Florida area.

DATES: Comments must be received on or before June 2, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2008–0187 and Airspace Docket No. 07–ASO–27 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2008–0187 and Airspace Docket No. 07–ASO–27) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2008–0187 and Airspace Docket No. 07–ASO–27.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov*, or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to extend RNAV route Q–110 and realign jet route J–73 in western Florida. Currently, Q–110 extends between the FEONA, GA, waypoint (WP) and the KPASA, FL, WP. This action would extend Q–110 southeastward from KPASA (located near Lakeland, FL) to the THNDR, FL, intersection (located about midway between Fort Myers and West Palm Beach, FL), adding approximately 115 NM to the length of the route. Two new waypoints (JAYMC and RVERO) would be established along Q–110 between KPASA and THNDR. The proposed extension of Q–110 would provide an RNAV route for use by aircraft transitioning between Miami ARTCC and Jacksonville ARTCC airspace and assist aircraft in circumnavigating military airspace associated with the Avon Park Air Force Range.

The FAA is also proposing to realign the existing segment of jet route J–73 between the LaBelle, FL, very high frequency omnidirectional range/tactical navigation aid (VORTAC) and

the Lakeland, FL, VORTAC by inserting an intermediate point that would be formed by the intersection of the LaBelle 314° True (T) (313° Magnetic (M)) radial and the Lakeland 162° T (161° M) radial. Shifting J–73 in this manner would provide airspace to accommodate the Q–110 extension. The realignment of J–73 would slightly increase the distance along the segment of the route between the Lakeland VORTAC and the LaBelle VORTAC from the current 77 NM to 78 NM.

Additionally, the FAA intends to make an administrative change to the route description of Q–110 by reversing the order in which the points that make up the route are listed. This change is needed to comply with the FAA policy that the points in even numbered route descriptions be listed in a west-to-east format. The change would have no effect on the alignment or charting of the route.

These changes are proposed in support of the Florida West Coast Airspace Redesign project and to enhance the safe and efficient use of the navigable airspace in the western Florida area.

Jet routes are published in paragraph 2004, and low altitude RNAV routes are published in paragraph 2006, respectively, of FAA Order 7400.9R signed August 15, 2007 and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The jet route and RNAV route listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify a jet route and RNAV route in Florida.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a, 311b, and 311k. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.R, Airspace Designations and Reporting Points, signed August 15, 2006 and effective September 15, 2007, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–73 [Amended]

From Dolphin, FL; LaBelle, FL; INT Labelle 314°(T)/313°(M) and Lakeland, FL, 162°(T)/161°(M) radials; Lakeland; Seminole, FL; La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–110 FEONA, GA to THNDR, FL [Amended]

FEONA, GA	WP	(Lat. 31°36′22″ N., long. 84°43′08″ W.)
GULFR, FL	WP	(Lat. 30°12′23″ N., long. 83°33′08″ W.)
BRUTS, FL	WP	(Lat. 29°30′58″ N., long. 82°58′57″ W.)
KPASA, FL	WP	(Lat. 28°10′34″ N., long. 81°54′27″ W.)
RVERO, FL	WP	(Lat. 27°24′35″ N., long. 81°35′57″ W.)
JAYMC, FL	WP	(Lat. 26°58′51″ N., long. 81°22′08″ W.)
THNDR, FL	INT	(Lat. 26°37′38″ N., long. 80°52′00″ W.)

* * * * *

Issued in Washington, DC, on April 8, 2008.

Stephen L. Rohring,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–8227 Filed 4–16–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2006–25709; Notice No. 08–04]

RIN 2120–AI70

Congestion Management Rule for LaGuardia Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On August 29, 2006, the Federal Aviation Administration published a notice of proposed rulemaking to address congestion at New York's LaGuardia Airport (LaGuardia), which included a proposal to administratively incentivize carriers to use larger planes. The FAA prefers to use measures that allow carriers to respond to market forces to drive the most efficient airline behavior and is amending its original proposal. To minimize disruption, the FAA proposes to grandfather the majority of operations at the airport and develop a robust secondary market by annually auctioning off a limited number of slots. The FAA is proposing two different, mutually exclusive options. Under the first option, the FAA would auction off and retire a portion of the slots and would use the proceeds to mitigate congestion and delay in the New York City area. Under the second option, the FAA would conduct an auction as it would under the first option, but the proceeds would go to the carrier holding the slot rather than the FAA and no portion of existing slots would be retired. This proposal also contains provisions for use-or-lose, unscheduled operations, and withdrawal for operational need. The FAA proposes to sunset the rule in ten years.

DATES: Send your comments on or before June 16, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–25709 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov*.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket. Or, go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions regarding this rulemaking, contact: Molly W. Smith, Office of Aviation Policy and Plans, APO–001, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3275; e-mail *molly.w.smith@faa.gov*. For legal questions concerning this rulemaking, contact: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073; e-mail *rebecca.macpherson@faa.gov*.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

The FAA has broad authority under 49 U.S.C. 40103 to regulate the use of the navigable airspace of the United States. This section authorizes the FAA to develop plans and policy for the use of navigable airspace and to assign the use that the FAA deems necessary for its safe and efficient utilization. It further directs the FAA to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

Table of Contents

I. Background

A. History of Congestion Management Initiatives at LaGuardia

The FAA managed congestion at LaGuardia under the High Density Rule (HDR) from 1969 through 2006. 14 CFR part 93 subparts K and S. The FAA first established allocation procedures for slots under the HDR in 1985. 50 FR 52195, December 20, 1985. These procedures included use-or-lose provisions and, while explicitly stating

that the slots were not the carriers' property, allowed carriers to buy, sell or lease the slots on the secondary market. On April 5, 2000, Congress enacted the Wendell H. Ford Aviation and Investment Reform Act of the 21st Century (AIR–21 or the Act). The Act phased out the HDR at LaGuardia effective January 1, 2007. In addition to phasing out the HDR, AIR–21 directed the Secretary of Transportation to grant exemptions from the HDR's flight restrictions for flights operated by new entrant carriers or flights serving Small-Hub and Non-Hub airports as long as the aircraft had less than 71 seats. The Act also preserved the FAA's authority to impose flight restrictions by stating that ''[n]othing in this section * * * shall be construed * * * as affecting the Federal Aviation Administration's authority for safety and the movement of air traffic.'' 49 U.S.C. 41715(b).

The slot exemptions mandated by Congress under AIR–21 resulted in gridlock at the airport as the number of exempted operations soared throughout 2000. Using its authority in 49 U.S.C. 40103, the FAA capped AIR–21 slot exemptions and hourly operations at LaGuardia. On December 4, 2000, the agency conducted a lottery that allocated the limited number of exemptions. While hourly operations were limited at the airport, the new cap at LaGuardia was significantly higher than it had been under the HDR prior to enactment of AIR–21.

Slots allocated under the HDR were scheduled to expire on January 1, 2007. Based on its experience in 2000, the FAA determined that simply lifting the HDR at LaGuardia would have a significantly adverse impact on the airspace around New York City and potentially on the National Airspace System (NAS) as a whole. Accordingly, on August 29, 2006, the FAA published a notice of proposed rulemaking (NPRM) proposing continuation of the cap on hourly operations at the airport as well as a new method of allocating capacity (71 FR 51360). Specifically, the FAA proposed to cap scheduled operations at 75 per hour; cap unscheduled operations at six per hour; impose an average minimum aircraft size requirement for much of the fleet serving the airport; and implement a limit on the duration of operating lives, known as Operating Authorizations, that would assure ten percent of the capacity at the airport would be available annually for reallocation based on an undetermined market mechanism. The average minimum aircraft size proposal was known as the aircraft upgauging proposal. This proposal was designed to maximize airport throughput consistent with the airport's physical constraints. The comment period closed December 29, 2006.

The FAA recognized that it would be unable to complete its rulemaking by January 1, 2007, when the HDR was scheduled to expire. On December 27, 2006 the agency published an FAA Order *Operating Limitations at New York LaGuardia Airport* (LaGuardia Order) (71FR 77854).[1] The LaGuardia Order retained the existing cap at the airport of 75 scheduled operations and imposed a reservation system for unscheduled operations that permitted six unscheduled operations per hour. The LaGuardia Order did not retain the conditions imposed by Congress on the AIR–21 exemptions; rather, flights conducted pursuant to the exemptions were rolled into the hourly cap without restriction.

The industry response to the new allocation method proposed in the NPRM was universally negative, although very few commenters argued that a cap on operations at the airport was unnecessary. The FAA received comments from 61 different commenters, with some commenters making multiple submissions. The largest group of commenters consisted of Federal, state and local government representatives and community groups who were concerned the FAA's proposal, if adopted, would result in specific communities losing direct service to and from LaGuardia. Fifteen carriers and four of their associations commented on the proposal, as did two airport associations, three other associations, the airport's proprietor the Port Authority of New York and New Jersey (Port Authority), the Canadian Embassy and nine individuals speaking in their private capacity.

In general, the carriers and their associations criticized any attempt by the FAA to regulate beyond the simple imposition of a cap on operations, arguing the proposal was too complicated, would not meet the agency's stated objectives, and would prove disruptive to the airport as a whole. Other commenters questioned the FAA's attempt to impose a market-based solution to fair allocation—not because they deemed the measures unduly oppressive, but because they believed market-based measures could not be implemented in a manner that adequately protected the interests of all affected parties. The American Association of Airport Executives (AAAE) expressed this sentiment most succinctly when it stated that while market-based solutions are generally preferable (since they are more predictable than administrative solutions), they are not preferable when their outcomes are likely to conflict with public policy goals or when artificial constraints are imposed.

While operations at LaGuardia remained capped throughout 2007, caps were lifted on afternoon operations at John F. Kennedy International Airport (JFK) on January 1, 2007, when the HDR expired at that airport. Operations at JFK had already begun to increase during the morning hours, but the increase in operations in the afternoon hours soon led to system overload. Nationally, the summer of 2007 was the second worst on record for flight delays. On September 27, 2007, the Secretary of Transportation announced the formation of the New York Aviation Rulemaking Committee (ARC) to help the Department of Transportation (Department) and the FAA explore available options for congestion management and how changes to current policy at all three major commercial New York City airports would affect the airlines and the airports.

By design, the ARC provided ample opportunity for extensive input by all stakeholders, having members from every major air carrier in the United States as well as foreign carriers and the Port Authority. Through the ARC process, these stakeholders played a key role in exploring ideas to address congestion and ensuring that any actions contemplated by the Department and the FAA would be fully informed. The ARC worked throughout the fall and submitted a report to the Secretary, dated December 13, 2007, discussing its findings. A copy of the ARC Report may be found at *http://www.dot.gov/affairs/FinalARCReport.pdf.*

B. Summary of the SNPRM

Today's proposal considers not only the concerns raised by commenters in response to the NPRM, but also takes into account the extensive discussions and issues raised by the members of the ARC. In response to the concerns and issues raised, the FAA has decided to withdraw both its upgauging proposal and its proposal to have Operating Authorizations that would have expired on a rolling ten-year cycle. In deference to the universal use of the term ''slots,'' the FAA has also decided to return to the use of that term rather than calling the operational authority to conduct scheduled operations at LaGuardia

[1] The LaGuardia Order was amended on November 8, 2007 (72 FR 63224).

Operating Authorizations.[2] Accordingly, for purposes of this rulemaking, a slot is defined as the operational authority assigned by the FAA to a carrier to conduct one scheduled arrival or departure operation at LaGuardia on a particular day of the week during a specific 30-minute period.

Rather than pursue its earlier proposal for allocating capacity, the FAA today proposes to lease the majority of operations at the airport to the historic operators for non-monetary consideration under its cooperative agreement authority. The agency also proposes to develop a robust market by annually auctioning off leases for a limited number of slots during the first five years of the rule. The FAA plans to evaluate the effects of the slot program proposed today on the distribution of slots and entry into LaGuardia on an ongoing basis. The agency intends to take this experience into account in all congestion management activities.

The FAA is proposing two different, mutually exclusive options. Under the first option, the FAA would auction off or retire a portion of the slots and would use the proceeds to mitigate congestion and delay in the New York City area. Under the second option, the FAA would conduct an auction as it would under the first option, but no slots would be retired and the proceeds would go to the carrier holding the slot after the FAA recoups the cost of the auction, rather than the FAA. In order to facilitate understanding of how each option would work within the entire regulatory scheme, the complete regulatory text for each option is set out in the ''Draft Regulatory Text'' section of this document.

Today's proposal also contains provisions for use-or-lose, unscheduled operations, and withdrawal for operational need. The FAA proposes to sunset the rule in ten years.

The following table briefly summarizes today's proposal and identifies differences between the two options.

OPTIONS 1 AND 2 OF PROPOSED REGULATION FOR LAGUARDIA

Feature	Option 1	Option 2
Base Schedule	Week 2 January 2007	Same.
Slot	Defined as right to land or depart (not both) in a 30-minute time window.	Same.
Number of Slots	75/hour + 3 unscheduled less 2% retired and not redistributed	75/hour + 3 unscheduled.
Slot Definitions	Common Slots: The Baseline (up to 20 slots per carrier) plus 90% of slots above 20 have 10 year leases; Limited Slots: 8% above the Baseline would have shorter leases and be auctioned over five years (1.6% each) (after which they convert to Unrestricted Slots); and 2% would have shorter leases & then be retired over 5 years (0.4%/yr).	Common Slots: The Baseline (up to 20 slots per carrier) plus 80% of slots above 20 would have 10 year leases; Limited Slots 20% would have shorter leases and then be reallocated via auction over five years (4%/yr).
Slot Time of Day	6 a.m. through 9:59 p.m., Monday through Friday and Sunday from 12 noon through 9:59 p.m.; no more than 75 in any one hour or 38 in any half-hour.	Same.
Mechanics	''Fair'' initial distribution with half of slots with less than 10 years life selected by carriers; the other half selected by FAA according to specified rules.	Same.
Auction	For slots returned to FAA because life has expired, an ascending clock auction among air carriers.	Same.
Auction Proceeds	Auction funds to FAA to defray costs of auction, then to NY capacity/projects.	Auction funds (net of auction costs) to incumbent holder; incumbent cannot bid on own slots.
Use/Lose	Only on grandfathered slots as consideration for slots	Same.
Term	Program is through March 2019; slot lives are whatever proportion of 10 years remain upon reallocation.	Same.
Bidders	Airlines	Same.
Holders	Holders of record (not marketing carrier)	Same.
New or returned capacity	Auctioned	Same.
Secondary market	Transparent not blind: carrier notifies FAA of intent to sell; FAA makes slot availability known; bilateral negotiations; final terms disclosed to OST for monitoring.	Same.
Logistical swaps of slots	Permitted	Same.

II. Discussion of the NPRM

A. Withdrawal of Upgauging Proposal

In the NPRM, the FAA proposed a requirement that incentivized carriers to upgauge the size of their aircraft based on an average number of seats. The FAA maintained that increasing the overall number of passengers using the airport would constitute a more efficient use of the NAS. In particular, the proposal was based on the FAA's belief that some of the inefficiencies at LaGuardia are related to the use of smaller aircraft in arguably saturated markets.

Under the NPRM's proposal, if a carrier failed to meet the airport's average aircraft size requirement, it would lose its least productive Operating Authorizations. Each carrier would have been allowed to maintain a baseline of operations of 10 daily operations without consideration of aircraft size, so as to minimize disruption. Recognizing the importance of service to LaGuardia to and from relatively small communities, the proposal also included special treatment for small communities, which would have permitted carriers serving those communities to continue service on smaller aircraft without the risk of losing an Operating Authorization. The

[2] When discussing comments to the NPRM, the FAA will use the term ''Operating Authorization'' since that was the term used in the NPRM. In discussing today's proposal, the agency will use the term ''slots''.

FAA has decided against moving forward with a proposal requiring upgauging at this time.

Several carriers and their associations alleged the FAA's upgauging proposal would be overly disruptive. Among the concerns cited were that the withdrawal of any one Operating Authorization would effectively mean the loss of a second one as well; the proposed one year effective date to upgauge was unduly restrictive and did not give carriers sufficient opportunity to change their fleet mix; and the proposal failed to acknowledge existing lease agreements with the Port Authority. United Airlines (United) and the Republic Group questioned how increasing aircraft size would actually lead to greater throughput, since carriers are presumably already using aircraft suitable for the markets they serve. Along with American Airlines (American), these commenters stated that the upgauging proposal was predicated on the premise that ground facilities are inadequately utilized, and that the inadequate utilization is a function of small and medium aircraft being overused. Not only did the FAA provide no data to support its position, they asserted, but in fact the relatively low load factors at LaGuardia indicate that the proper size aircraft are being used.

In addition, the Port Authority and The City of New York noted that gates at LaGuardia are not interchangeable and that many gates (and taxiways) at the airport cannot accommodate larger aircraft. Thus, the proposal would not work because of a fundamental mismatch between the proposal and the management of landside infrastructure. US Airways suggested that if the FAA was committed to upgauging, it could require an increase in the number of available seats, but in a gradual, phased-in manner that is economically sustainable.

Some carriers also opined that the proposal was overly disruptive in that the proposed baseline of operations that would be exempt from the upgauging requirements was too small. While carriers with a smaller presence at the airport like JetBlue Airways (JetBlue) favored an increase in the number of protected operations (e.g., 20 daily operations), US Airways favored a carrier being able to protect at least 11 percent of its fleet, with smaller carriers being able to protect 10 operations.

Notwithstanding the contemplated carve-out for small community service, United, and to some extent the Regional Airline Association (RAA), argued that requiring upgauging may force a carrier to discontinue service from smaller communities because the market in that community may only support a smaller aircraft. US Airways noted that these operations can be profitable and are unlikely to be discontinued completely; the carrier also asserted that the proposal would likely have the most adverse impact on medium-sized airports that benefit from multiple daily frequencies on smaller aircraft. Concern over the potential loss of small community service was echoed by the Federal, state and local representatives who wrote to the FAA expressing concern that service to specific communities could be lost.

Finally, United argued that the upgauging proposal was not rationally related to Congressional authorization in 49 U.S.C. 40103(b), because increasing passenger throughput has nothing to do with assigning the use of the airspace or prescribing air traffic regulations. Rather, according to United, the proposal would have mandated which equipment a carrier may use to access the runway at LaGuardia, and was accordingly beyond the FAA's authority. The Port Authority was likewise concerned that the proposal impermissibly infringed on its rights as the airport proprietor.

Based on careful review of the public comments, the FAA has determined that there are simpler, less prescriptive ways to permit airlines to respond more directly to market forces. Given carriers' long-term leasing and purchasing arrangements, the timeframes for implementing the proposal may have been too short; and if adopted, the proposal potentially could have inadvertently disrupted operations at the airport. The FAA recognizes the long-term contractual relationships that exist at LaGuardia. At the same time, the agency prefers that the limited asset that makes up an Operating Authorization be allocated using market principles rather than regulatory or administrative principles. Today's proposal meets that objective without unduly burdening either the airport or the carriers.

At this point in time, the FAA does not believe there is a need to dictate a minimum aircraft size to achieve the overall objective that service to and from LaGuardia be reasonably available to the maximum number of people who wish to use it without undue delay. Accordingly, the FAA is withdrawing its proposal for upgauging.

Nevertheless, the agency believes that the concept behind its upgauging proposal remains valid: capacity cannot be considered merely in terms of the number of aircraft being handled by the FAA's Air Traffic Control system (ATC). The FAA believes United's interpretation of the FAA's statutory authority to manage the efficient use of the airspace as being limited to the movement of aircraft generically is overly narrow. The characterization of operations in terms of aircraft makes sense to the air traffic controllers, whose job it is to control all aircraft flying under instrument flight rules (IFR) within their sector. United's characterization does not make sense as a matter of policy or statutory interpretation because it ignores the reality that aircraft operations are designed to move people and cargo.

The FAA does not believe the relatively low load factors at LaGuardia support the premise that the market dictates the use of smaller aircraft to many of the markets with service to the airport. It is true that some smaller communities may not be able to support daily operations on larger aircraft. The FAA asserts, however, that certain market patterns, where multiple daily flights on small aircraft are not related to the size of the communities served, indicate an inefficient use of the slot, or behavior that stifles competition. The relatively low load factors in these routes indicate that many of these flights could be combined, resulting in a more efficient use of the system.

The FAA also acknowledges that the use of small aircraft to densely populated communities on a frequent basis is not purely a function of the market. As noted by the Port Authority, excessive use of smaller aircraft is to some degree a combination of customer preference for frequent access, but it is also a function of political concerns and a long-standing regulatory regime that created incentives favoring the use of small aircraft. The expiration of the HDR and AIR–21 exemptions should naturally encourage more efficient use of aircraft because there is no longer a perverse incentive to use smaller aircraft, regardless of the market being served. As to consumer preference for more regular flights, the decision to offer numerous daily flights in any particular market will inevitably be driven by market considerations. The FAA believes that the options being proposed today should reduce delay and permit airlines to respond more freely to market forces, favoring efficiency and aircraft upgauging without the government dictating any particular method of increasing overall passenger throughput and without sacrificing service to small communities.

B. Perimeter Rule

As an alternative to the upgauging proposal, US Airways suggested the

FAA preempt the Port Authority's Perimeter Rule.[3] It argued the Perimeter Rule drives the use of smaller aircraft because carriers cannot engage in the long-range operations that support the use of larger aircraft. Alaska Airlines also supported lifting the Perimeter Rule.

US Airways maintained there is no justification for retention of the Perimeter Rule. Not only is LaGuardia no longer primarily an airport for business travelers, but JFK no longer needs development, and the introduction of Stage-3 aircraft has sufficiently reduced the airport's overall noise footprint from when the Port Authority established the Perimeter Rule. Thus, according to US Airways, the rationale that the Port Authority provided to the court in *Western Air Lines* v. *Port Authority of New York and New Jersey* is no longer applicable.

The FAA has decided against addressing the Perimeter Rule in this rulemaking because of the need to explore more fully several operational and policy issues that may be impacted by changes in the Rule, including potential impacts on airport capacity and air services. The FAA intends to monitor the impact of today's proposal, if adopted, as well as the implications of changes to or elimination of the Rule. Should the agency deem that Federal action on the rule is in the public interest, it may choose to preempt.

C. Finite Operating Lives

The FAA proposed to initially allocate all Operating Authorizations previously allocated under the HDR, and then pull back ten percent of them every year to force an active market for this scarce resource. The Operating Authorizations would have had an initial operating life ranging from three to thirteen years and, once reallocated, would have had a ten-year operating life. While providing a general discussion of how the Operating Authorizations would be withdrawn, the FAA did not provide a discussion of how they would be reallocated, other than to say that the agency was seeking legislation that would provide additional flexibility in allowing the FAA to reallocate via a market-based mechanism such as an auction or congestion pricing. The FAA has decided that a ten percent annual turnover at LaGuardia could be overly disruptive as a first step in applying market principles and has decided to propose a scaled back reallocation mechanism. This scaled back proposal is discussed in detail later in this document.

In general, most commenters characterized the proposal to introduce expiring Operating Authorizations at LaGuardia as unnecessary, unworkable, and unlawful under the Administrative Procedure Act and the Takings Clause of the Fifth Amendment of the US Constitution. Others claimed that the proposal did not go far enough.

American asked why the FAA thought it needed such an intrusive and complicated regulatory scheme to promote access to new entrants. It noted that the agency promoted access to new entrants at Chicago's O'Hare International Airport (O'Hare) by adopting a blind Buy/Sell secondary market. Midwest Airlines, Delta Air Lines (Delta) and the RAA argued that the underlying premise that limited operating lives were required to open up the airport to new entrants was based on a false assumption that the airport would otherwise be shut down to new entrants or carriers with a limited presence at the airport. They argued that slots were successfully purchased under the Buy/Sell rule, and that the secondary market only failed when exemptions to the HDR were given away for free under AIR–21.

Consistent with their comments on the upgauging proposal, most carriers and their associations argued that randomly terminating and reallocating ten percent of Operating Authorizations each year would wreak havoc with the carriers' schedules. They asserted the impact on industry would be so severe and unreasonable as to render the proposal unworkable, creating perpetual instability that could disrupt airport services and traveler expectations. In particular, The City of New York, Delta and US Airways claimed the full operational impact of the rule could make it virtually impossible to operate short-haul shuttles. American, Delta, and AAAE argued the impact could be especially bad on small communities as transfer of Operating Authorizations from carrier to carrier would make consistent service to these communities difficult. As with the upgauging proposal, the Port Authority said it would be difficult to handle gate assignments and leases with an annual turnover of up to ten percent. American claimed the churning of Operating Authorizations would fragment real estate across the airport over time. The carrier argued this fragmentation would be extremely burdensome for the Port Authority and disruptive to airlines and consumers.

Some carriers noted that the operating lives would actually serve as a damper on the free market, rather than the catalyst that the FAA envisioned. American said the proposal failed to recognize that investment in routes and infrastructure is largely dependent on the ability to continue serving that route. US Airways and Midwest Airlines echoed this sentiment, positing expiring lives would actually act as a disincentive to invest in the airport, because there will be no assurance that investment expectations can be met. The Air Transport Association of America (ATA) queried what impact expiration dates and other restrictions would have on the value of slots in the secondary market.

While many commenters claimed they could not meaningfully comment on the proposal since the FAA did not explain how it intended to reallocate withdrawn capacity,[4] others argued that the proposal would be unlawful even if the reallocation mechanism had been explained. United and Midwest Airlines claimed the proposal did not implicate safety or movement of air traffic and was accordingly beyond the FAA's authority. Assuming the FAA retained its authority to impose caps after AIR–21, the ATA and the Airports Council International—North America (ACI–NA) argued it did not necessarily follow that this authority encompasses ''management of the nationwide system of air commerce,'' as the FAA asserted in the NPRM. They claimed such an assertion connotes the business of air transportation, which exceeds the agency's authority to regulate the safety and movement of air traffic. United asserted that the FAA appeared to rely on the Department's authority in 49 U.S.C. 40101(a), but noted that reliance on that authority was equally misguided since it is limited to the Department's exercise of economic regulation.

While carriers generally claimed the proposed reallocation of Operating

[3] The Perimeter Rule prohibits non-stop flights of more than 1,500 miles into and out of LaGuardia, except for flights in and out of Denver. The Perimeter Rule was first established in the late 1950s under an informal arrangement between the Port Authority and the airlines. It was formalized in 1984 and unsuccessfully challenged in *Western Airlines* v. *Port Authority of New York and New Jersey,* 658 F. Supp. 952 (SDNY 1986), *aff'd* 817 F2d. 222 (2nd Cir., 1987), *cert. denied,* 485 U.S. 1006 (1988).

[4] The FAA stated that it did not provide the reallocation mechanism because it did not have the authority to reallocate other than through an administrative mechanism. The FAA's original analysis was overly simplistic. The FAA correctly stated that it did not have the authority to implement a congestion pricing scheme. However, we also said that we did not have the authority to conduct auctions; this statement was incorrect. As discussed more fully later in the document, the FAA has ample authority to lease or otherwise dispose of its property without running afoul of the restriction on user fees, the restriction that the FAA initially believed was problematic.

Authorizations as a confiscation of their respective property rights, some argued the FAA's proposal was in violation of the Takings Clause of the U.S. Constitution because carriers would be deprived of all beneficial use of the property,[5] and the FAA could not meet the standards set forth in *Penn Central Transportation Co* v. *City of New York*.[6] In particular, United and US Airways argued that handicapping competitors through a forced transfer of operating rights does not advance a legitimate government interest, particularly when there is no showing that a forced transfer will actually enhance competition or consumer welfare.

In contrast, the Air Carrier Association of America (ACAA) argued that legacy carriers were given large numbers of slots through AIR–21, and did not need the market protection contained within the proposal. It noted that under the LaGuardia Order and the HDR, operating rights were never permanently allocated; nor were carriers offered assurances that they could do whatever they wanted with them. In fact, carriers have always been on notice that the Operating Authorizations and their predecessor slots could be recalled. Accordingly, ACAA urged the FAA to withdraw immediately ten percent of all Operating Authorizations held by carriers holding more than 75 Operating Authorizations and redistribute them to limited incumbents operating larger aircraft. It maintained whatever reallocation mechanism was used should kick in before the proposed three years since that extended timeframe unnecessarily restricts the market. AirTran Airways (AirTran) and WestJet supported the concept of the FAA increasing the number of Operating Authorizations provided to small carriers and immediate implementation of the rule.

The FAA disagrees with American's claim that a staggered withdrawal and reallocation of Operating Authorizations is not needed to protect new entrants. This approach is one of several rational means of ensuring that carriers with modest service, or no access at all, have an opportunity to gain or increase access at one of the most sought-after airports in the country. While a blind secondary market would also facilitate new entrant access, and the FAA uses this method to assist new entrants at O'Hare, the agency also made specific provisions in that rulemaking to make new and returned capacity preferentially available to new entrants and carriers with a limited presence at the airport. The FAA does not believe a blind secondary market alone is sufficient to provide opportunities for new or increased access.

The FAA agrees that its original proposal could have caused disruption at the airport. The premise underlying the proposal to require a full ten percent turnover at the airport each year was not to force disruption, but rather to ensure the efficient use of a scarce resource and to provide access to new entrants and existing operators in a manner other than creating preferences or exemptions. It is exactly these preferences and exemptions that many commenters claim marginalized the secondary market under the HDR. As the FAA has stated several times over the past few years, its primary goal in addressing congestion is to increase capacity wherever possible. Limiting the number of operations at an airport is a last option because it restricts access to the airport. The FAA also believes the market should play an active role in the allocation of the limited resource whenever it becomes necessary to limit operations for more than a short period of time.

The options being proposed today meet the same policy objective that drove the proposal in the NPRM to have operating lives expire, albeit in a less aggressive manner. The FAA believes this new approach will help foster a vibrant secondary market while maintaining stability at the airport. The legal concerns raised by commenters will be addressed later in this document.

III. Proposal To Allocate Limited Capacity at LaGuardia Efficiently

A. Need for a Cap on Operations

The FAA believes that at least for the next several years, LaGuardia will likely be oversubscribed in terms of its physical ability to handle aircraft. Simply put, expansion of the airport by adding runways is not a viable option given its location. Accordingly, a cap on operations at the airport is necessary to provide for the efficient use of the NAS. In the NPRM, the FAA proposed to cap weekday and Sunday afternoon operations at 81 per hour (75 for scheduled operations and six for general aviation). The airport is already capped under the LaGuardia Order at 81 (75 for scheduled operations and six for general aviation). Today's proposal, if adopted, will replace that order. The FAA does not intend to raise the cap unless new capacity becomes available and has proposed reducing the number of operations available for general aviation to three per hour.

The Port Authority claimed that 75 scheduled operations per hour was too high, since delays were increasing, and argued that the cap should start at 6 a.m. and cover Saturday mornings because these time periods have operations that exceed runway capacity.

In response to the NPRM, the ATA claimed that the FAA had not presented any new data indicating that a cap is necessary, instead relying on delays during the summer of 2000. The ATA argued that the FAA merely assumed that demand exceeds capacity at LaGuardia, without discussing how the proposal would impact that demand.

The impact of either the NPRM or today's proposal on demand at LaGuardia is difficult to judge because the LaGuardia Order has kept operations from growing since the expiration of the HDR. Accordingly, the comparison in terms of delay reduction should not be between the LaGuardia Order and any final rule, but rather between an unconstrained airport and a final rule. The last time the airport was close to unconstrained was in 2000, which is why the FAA relied on its experience in 2000 in the NPRM.

The FAA believes the summer of 2007 served as a stark reminder that the demand for access to New York City is exceptional. New York City is served by three major airports; theoretically there should be more than enough capacity. However, while LaGuardia remained a constrained airport last summer, JFK and Newark were not constrained and carriers were allowed to add flights at will. As a result, the New York City area airports experienced nearly unprecedented delays last summer, and the level of flight delays were regularly reported in the local and national press. The delay numbers at JFK were so high that the FAA initiated a Scheduling Reduction Meeting in October 2007 and announced a cap at the airport in January of this year. Concerned that those carriers that could not obtain desired access at JFK would quickly oversubscribe Newark, the FAA proposed a cap there in March. Looking forward, all three major airports in the New York City area will be capped.

The FAA is unwilling to lift the cap at LaGuardia simply because the last time there was significant growth at the airport was in 2000. Notwithstanding ATA's assertion that perhaps there is no need for a cap, its members appear to support reasonable limits on the number of operations at the airport. When the FAA imposed the cap on LaGuardia after the expiration of the HDR at the

[5] Cf., *Lingle* v. *Chevron USA, Inc.,* 544 U.S. 528 (2005).

[6] 438 U.S. 104 (1978).

end of 2006, no carrier argued that a cap was inappropriate.

We agree with the Port Authority that operations at the airport should be limited as early as 6 a.m., and the LaGuardia Order limits operations beginning at that hour. Carriers have moved their morning schedules out sufficiently early that the FAA is encountering excess demand by 6 a.m. The agency has tentatively decided against capping operations on all day Saturday and Sunday morning because the level of congestion during these time periods is significantly less than during the workweek and on Sunday afternoons. The Port Authority has not provided data indicating that a cap is needed on Saturday mornings; it has merely asserted that there are runway constraints. Should the Port Authority continue to believe the cap should be expanded, the FAA welcomes an analysis of the capacity problems on Saturday mornings.

B. Sunset Provision

The FAA's proposed rule, if adopted, will expire in ten years. To the extent new capacity became available, the FAA could increase the size of the cap and auction off that new capacity for the life of the rule. One of the criticisms of the HDR was that it was a temporary rule that has lasted almost 40 years. As such, it became difficult to manage, particularly as it was amended to address changes in business models. We believe the public interest is better served by directly providing the rule will sunset in ten years. This approach will allow for future determinations by the FAA as to whether a cap is still needed and, if so, whether changes are needed to more efficiently allocate and constrain the scarce resource. At present it is impossible to determine what changes in business models may occur over the next ten years. In addition, full implementation of the New York/New Jersey/Philadelphia Metropolitan Area Airspace Redesign project and NextGen technologies are expected to mitigate and improve air traffic efficiency within the next ten years, and we should not prejudge the market response.

C. Need for More Efficient Allocation

As noted by American in its comments to the NPRM, Congress has directed the Department to place ''maximum reliance on competitive market forces and on actual and potential competition'' (49 U.S.C. 40101(a)(6)). This maximum reliance means the FAA is obliged not to simply walk away from an airport once it has imposed caps, but rather to take steps to ensure that there are, in fact, competitive market forces and actual and potential competition. Competition at an airport benefits the flying public by providing price competition and expanded service. The ability of carriers to initiate or expand service at the airport is hindered, in large part, by the imposition of the cap. Accordingly, the FAA believes it must strike a balance between (1) promoting competition and permitting access to new entrants and (2) recognizing historical investments in the airport and the need to provide continuity. It is not the role of the Government either to dictate particular business models or to constrain a market and provide no means for others to enter that limited market.

Not only is the FAA required to assure the efficient use of the NAS, but it must do so in a manner that does not penalize all potential operators at the airport by effectively shutting them out of the market. Accordingly, the FAA believes that it is well within the agency's authority in 49 U.S.C. 40103 to provide some mechanism for reallocation. Today's proposal attempts to strike the appropriate balance by actively developing a robust secondary market that properly values the limited asset that the FAA created.

D. Authority To Allocate Slots at LaGuardia

The FAA intends to allocate some portion of the available slots at LaGuardia via an auction process. The FAA would initially allocate the vast majority of slots to incumbents at the airport by entering into a cooperative agreement that would lease the slots for a period of ten years. The remaining slots would revert to the FAA over a five year period for retirement or reallocation via an FAA-sponsored auction. As a result of the auction, the acquiring carrier would enter into a lease agreement with the FAA that would last the remainder of the rule. Leases awarded under the cooperative agreements or awarded pursuant to an auction would be subject to lease terms, and the failure to abide by those lease terms would constitute a default of the lease. Carriers would be allowed to sublease their slots subject to the same terms and conditions imposed by the FAA in the original lease, although new terms and conditions unrelated to the carrier's obligations to the FAA could be added.

Under Option 1, the FAA would retain all auction proceeds and dedicate their use to congestion management in the New York City area. Under Option 2, the carrier that had held the slot would be allowed to keep the proceeds after the FAA had recouped its costs associated with running the auction.

In the NPRM, the FAA stated that it did not have the authority to reallocate Operating Authorizations via a market-based mechanism. The FAA was concerned that it did not have this authority because of annual appropriations restrictions dating back to 1998 that prohibit the agency from expending funds to ''finalize or implement any regulation that would promulgate new aviation user fees not specifically authorized by law after the date of enactment of this Act.'' [7] The FAA continues to believe that it cannot rely on a market-based allocation method under a purely regulatory approach, which is why it explicitly sought legislation on this matter.

However, the FAA's authority is not limited to regulatory action. The agency has independent authority to dispose of property,[8] and regulatory action is not required prior to the lease of property. The FAA implemented its general authority to dispose of property in its Acquisition Management System, which went into effect on April 1, 1996.

Because of the congressional mandate in 49 U.S.C. 40101(a)(6) to rely to the maximum extent possible on competitive market forces, the FAA has determined that it is appropriate to take a bifurcated approach. Today the agency is requesting comment on an approach whereby the FAA would establish a cap on operations and address which slots would revert to the FAA for reallocation through a regulation, but would use its transaction authority to allow for reallocation of slots via a market-based mechanism.

As discussed below, this approach has the added benefit of clarifying the unsettled issue of the extent to which a slot holding should be imbued with property rights.

1. Authority To Determine the Best Use of the Airspace

The United States Government claimed exclusive sovereignty over United States airspace in 49 U.S.C. 40103. Citizens of the United States have a public right of transit through navigable airspace, but the FAA is authorized to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. To the extent these needs can

[7] In 2006 this provision could be found in Public Law 109–115. For 2008, the same provision may be found in Public Law 110–161.

[8] The FAA has had express authority to lease property to others since 1996, Pub. L. 104–264, and general authority to dispose of an interest in property for adequate compensation for long before that in 49 U.S.C. 40110(a)(2).

be met without specifying which citizen may transit or reserve a particular segment of airspace at a particular time, there was no need for the FAA to place constraints such as slots on the use of the airspace—this remains the case for the vast majority of the NAS.

As described above, however, at LaGuardia and a few other airports, in order to ensure the efficient use of airspace, the FAA has had to impose constraints by assigning to carriers operational authority to conduct a scheduled IFR arrival or departure operation on a particular day of the week during a specified 30-minute period. These reservations of airspace were called slots under the HDR. After the FAA issued the Buy/Sell rule, these slots were treated not only as property of the United States Government, but also as if the carriers had a property interest, albeit an interest that was heavily encumbered by the restrictions imposed by the FAA. The nature of this proprietary interest, however, has always been somewhat unclear. To encourage the most efficient use of constrained airspace the FAA is clarifying the property interest that the FAA is willing to transfer to airlines for a limited period of time. However, the FAA has determined that in order to assure the efficient use of airspace, it cannot simply permit those to whom it grants authority to use the airspace to treat that authority as their own. Such an approach would not only ignore the inherently valuable nature of the airspace usage assignment, but allows a select few to profit from a governmental interest to the detriment of their competitors and the public as a whole. Ultimately, it is the FAA that has sovereignty over and controls the airspace.

2. Authority To Enter Into Leases and Cooperative Agreements

The FAA has authority to lease real and personal property, including intangible property, to others. 49 U.S.C. 106(l)(6) and 106(n). When disposing of an interest in property, however, the FAA must receive adequate compensation. 49 U.S.C. 40110(a)(2). The FAA also, however, has broad authority to enter into cooperative agreements on such terms and conditions as the agency may consider appropriate. 49 U.S.C. 106(l)(6). Under the Federal Grants and Cooperative Agreements Act, a cooperative agreement is to be used when the principal purpose of the agreement is to transfer a thing of value to a recipient, either public or private, to carry out a public purpose of support or stimulation authorized by law, instead of acquiring (by purchase, lease or barter) property or services for the direct use or benefit of the agency, and there is substantial Federal involvement in the activity. The FAA believes this is the appropriate vehicle to use to transfer most of the slots as described in the following options, for a ten year period, to the carriers that currently have Operating Authorizations at LaGuardia. Doing so will recognize these carriers' historical investment in LaGuardia, and the public interest that has been served by that investment. In addition, doing so will prevent the disruption to the national air transportation system described in the comments to the NPRM that might otherwise occur, allowing the public to benefit from continued certainty of readily available air transportation to and from this airport. There will, however, be substantial ongoing Federal involvement with these slots, as the FAA will retain ATC responsibilities for assuring that the use of these segments of airspace for their specified times is done safely and with maximum possible efficiency. It is therefore appropriate to use cooperative agreements to transfer these property interests.[9]

3. The FAA's Proposed Actions Do Not Constitute a Taking in Violation of the Fifth Amendment

United's and US Airways' assertion that the imposition of a cap on operations at LaGuardia and any reallocation mechanism that does not give incumbent carriers an unrestricted right to the slots created by the cap constitutes a taking in violation of the Fifth Amendment is simply incorrect. Carriers possess no absolute property interest in slots unless the FAA gives it to them. The FAA has consistently refused to do that under both the HDR and the LaGuardia Order. Indeed, upon the expiration of the HDR, any putative interest in those slots expired on December 31, 2006, and the LaGuardia Order specifically states that carriers have no right to Operating Authorizations after the expiration of the order. If the FAA proceeds with today's proposal, carriers will have some property rights in the resulting slots, but those rights will be limited by the terms of any final rule and any lease terms that the FAA specifies. Ultimately, it is the FAA that controls the airspace and controls the rights of carriers to use it.

United's reliance on *Lingle* and *Penn Central* in arguing that the annual reversion of Operating Authorizations for reallocation by the FAA would constitute a taking was misplaced, and remains inapplicable to today's proposal.[10] Neither case stands for the proposition that the federal government cannot implement a regulatory scheme like the one proposed here. In *Penn Central* the Supreme Court set forth a general test for determining whether a government regulatory action resulted in a taking of property without just compensation. While noting that such determinations are necessarily fact-specific, the Court set forth three basic criteria to evaluate: (1) The economic impact of the regulatory action on the claimant, (2) the level of interference with reasonable investment-backed expectations, and (3) the character of the governmental action.[11] These standards do not suggest a Takings Clause claim in this instance.

Given the fact that LaGuardia has operated under some type of cap for the past 40 years, no carrier could realistically have investment expectations either that the airport will be unconstrained before sufficient capacity is realized or that it would be granted absolute rights in its historical operating schedule. Indeed, the HDR imposed much more stringent constraints on how carriers could conduct operations at the airport than the FAA is proposing here.

Likewise, there is no evidence that the proposed rule, if adopted, will have an unduly harmful impact on any air carrier. At most, less than 20 percent of any carrier's current operations at LaGuardia will be affected. As stated by the Court in *Penn Central*, '' '[t]aking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely

[9] Under the cooperative agreements the FAA will be transferring a leasehold interest in the slots, but it will not entirely dispose of its property. Receiving monetary compensation from these transfers is antithetical to the definition of a cooperative agreement. Nonetheless, to the degree that adequate compensation might be considered required under 49 U.S.C. 40110(a)(2), the compensation will be the carriers' agreement to be bound by the terms in the cooperative agreement as well as FAA's recognition of the public value received by the carriers' historical investment at LaGuardia.

[10] The FAA is puzzled by United's reliance on *Lingle*. The holding in *Lingle* was unrelated to any determination by the Court that there was a ''permanent physical invasion of her property.'' 544 U.S. 528, citing *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992). United has not alleged that the imposition of a slot regime results in its inability to use its property. Rather, it asserts that its flight schedule is an intangible asset, the use of which is critical for utilizing its tangible assets, *i.e.*, its terminal facilities, gates, servicing facilities, and aircraft (United comments at p. 29). The correct analysis is conducted under *Penn Central* and *Connelly* v. *Pension Benefit Guarantee Corp.*, 475 U.S. 211 (1986).

[11] *Connelly* at 224–225.

abrogated.'' [12] When viewed as a whole, the impact of today's proposal on even the most negatively affected carrier is not sufficient to trigger a plausible takings claim. The vast majority of operations will continue under slots grandfathered to the carriers at no charge. Each carrier will be assured that up to 20 of their operations will be protected from any reversion if it meets the minimum usage requirements, and only ten to twenty percent of its operations above twenty will be subject to reversion to the FAA for retirement or reallocation. In addition, carriers will be allowed to sublease their slots subject to the terms and conditions set forth in the lease agreement, thus potentially avoiding the loss of a slot for inadequate usage.

Nor does the proposed action have the character of a taking as interpreted in well-settled jurisprudence. This rulemaking proposes to minimally adjust the benefits and burdens of the economic life of carriers at LaGuardia in order to promote the common good. The rulemaking proposes to limit flights at LaGuardia in order to relieve congestion that impacts the NAS as a whole and LaGuardia in particular. As such, it will benefit the airline industry, businesses relying on aviation to timely meet their delivery schedules, and the travelling public. The proposed rule anticipates only a modest reduction, under one of two proposed options, in the number of flights currently allowed at LaGuardia under the LaGuardia Order, which has been in place, unchallenged, since January 1, 2007. Unlike the governmental action in *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998), the proposed rulemaking does not single out an air carrier based on conduct far in the past and unrelated to any future commitments or injury it caused.

E. Allocation of Slots

The FAA is proposing two different options for allocating slots. Under both options the vast majority of slots would be grandfathered to existing carriers at the airport, with a relatively small minority either retired or auctioned off in the free market. The FAA believes either approach would help stimulate a secondary market and would lead to a proper assessment of the slots' true value. The agency also believes that either approach would have a minimal impact on operations at the airport and would avoid much of the potential disruption associated with its proposals in the NPRM.

[12] *Penn Central* at 130.

1. Categories of Slots

Under today's proposal, the FAA would lease carriers property interests in slots to carriers for a period of up to ten years, the date the rule would sunset. There would be three categories of slots: common slots, unrestricted slots, and limited slots.

Common Slots are those slots grandfathered to carriers currently at the airport. They would be awarded to the carriers under a cooperative agreement for the duration of the rule. The cooperative agreement would provide carriers with a ten-year leasehold interest. Once the rule sunsets, all interests would revert to the FAA. Unlike slots allocated under the HDR and Operating Authorizations allocated under the LaGuardia Order, carriers would be granted clear property rights to Common Slots, which could be collateralized or subleased to another carrier for consideration. These property rights, however, would not be absolute. Common Slots would be subject to reversion to the FAA under the rule's minimum usage provision, and could be temporarily withdrawn for operational reasons.

Those slots not categorized as Common Slots would be categorized initially as Limited Slots and then as Unrestricted Slots once they are reallocated.

Unrestricted Slots are slots that a carrier would acquire as a leasehold under the auction process discussed later in this document. Since a carrier leasing an Unrestricted Slot would be required to do so because of government action, these slots would not be withdrawn by the FAA either under the use-or-lose provisions or for operational reasons. As with Common Slots, Unrestricted Slots would expire when the rule sunsets.

Limited Slots are slots that are identified for retirement or auction and are leased to the carriers under a cooperative agreement for a period of 1–4 years [13] so that they can be retired or reallocated via auction after that period of time. Limited Slots would convert to Unrestricted Slots after they are auctioned off. As with Common Slots, Limited Slots could be withdrawn under the proposed use-or-lose provision, or for operational reasons.

2. Initial Allocation of Capacity

Upon the rule's effective date, each carrier at LaGuardia would automatically be awarded up to 20 common slots, which would constitute the carrier's base of operations. The FAA believes this is a rational approach to assuring that no carrier is impacted at a level that could seriously disrupt its existing operations. Air Canada would be awarded an additional 22 common slots because of the United States' treaty obligations with Canada. Under Option 1, 90 percent of the remaining slots would also be grandfathered as Common Slots to the carrier holding the corresponding Operating Authorization under the LaGuardia Order. Under Option 2, 80 percent of the remaining slots would be grandfathered as Common Slots. The determination of which carrier is entitled to any particular slot will be based on which carrier was allocated the corresponding Operating Authorization for that slot during the first full week of January 2007.[14] The FAA is proposing to grandfather the majority of slots at the airport in order to minimize disruption and to recognize the carriers' historical investments in both the airport and the community. The FAA seeks comment on the percentage of slots that should be available for reallocation under either option.

As noted above, the remaining slots will be categorized as Limited Slots. Limited Slots may either be retired by the FAA or reallocated via auction. Under the proposal, the number of slots that a particular carrier would have classified as Limited Slots would be based proportionally on the carrier's presence at the airport, taking into consideration each carrier's base of operations. The FAA would inform all carriers that will be awarded Limited Slots how many Limited Slots they will be entitled to no later than the rule's effective date.

Under Option 1, the FAA would randomly select operations in excess of 75 in those hours where there are more than 75 scheduled operations.[15] These operations will be designated as Limited Slots and will be retired, so that there are no hours where there are more than 75 scheduled operations. The FAA has tentatively decided to select these slots because the agency believes delay is

[13] Twenty percent of the Limited Slots would not be leased to carriers as Limited Slots. This is because the FAA intends to either retire them or auction them as Unrestricted Slots shortly after the final rule, if adopted, takes effect.

[14] US Airways had argued in its comments to the NPRM that looking at a single week did not adequately account for seasonal usage. The FAA has looked at usage patterns at the airport throughout the year, and has not found a significant difference in which carriers are operating at the airport throughout the year. To the extent there is seasonal usage, the FAA believes carriers should be able to lease slots on the secondary market or engage in one-for-one trades.

[15] During the first full week of January, 2007, there were more than 75 hourly operations during the 0900 and 1700 hours.

best mitigated under this proposal by assuring there are no hours with scheduled operations above 75. An affected carrier would then have ten days to classify 50 percent of the remaining slots that will be scheduled to revert to the FAA for auction or retirement. During the following ten days, the FAA would then determine through a randomized process the remainder of slots that will be categorized as Limited Slots. Thus, if a carrier had 200 Operating Authorizations under the LaGuardia Order, it would be notified on the effective date of the rule that 18 of its slots (ten percent of 180) were subject to designation as Limited Slots. The carrier would have 10 days to notify the FAA which nine slots it designated as Limited Slots, and the FAA would designate the remaining nine.

In determining which slots should be designated as limited slots, the FAA would initially exclude from consideration slots held during all hours where carriers have collectively determined two or more slots should be a Limited Slot. This approach will assure slots will be available for auction throughout the day. The FAA would also determine in what year (1–4) each Limited Slot will revert to the FAA for reallocation or retirement. In this way, all carriers would know within 20 days of the rule's effective date what slots will become available for purchase and when. The FAA does not currently intend to target any slots for retirement under Option 2. Otherwise, the process to select limited slots would be the same as under Option 1.

The FAA is concerned that today's proposal is primarily focused on the efficient allocation of slots and does not significantly reduce delay from levels established under the HDR after AIR–21 and the LaGuardia Order. It recognizes that even under Option 1, the level of delay mitigation would be minimal, with only 18 slots retired after five years. The agency anticipates that at the end of the scheduled retirements, the average minutes of delay would be reduced by approximately one minute as the result of scheduled retirements. The FAA believes that it may be appropriate to better address delay mitigation by reducing the overall number of hourly operations at the airport. In contrast to the 78 total hourly operations proposed today, the HDR permitted a maximum total number of operations at LaGuardia of 68 per hour.[16] The numerous exemptions issued pursuant to AIR–21 effectively increased that hourly rate to approximately 81 operations per hour, with roughly 75 of those operations dedicated to scheduled operations.

Accordingly, the agency specifically requests comment as to whether it should reduce the maximum number of scheduled operations from 75 to a lower number. In addition, the agency seeks comment on whether it should maintain a maximum number of scheduled operations at 75 per hour but increase the number of slots that would be retired. The FAA also requests comment on whether it should retire some percentage of slots under Option 2 and, if so, by how much. Finally, there are a few hours where there are slightly fewer than 75 scheduled operations. The FAA seeks comment on whether these slots should be retired or reallocated via an auction.

The FAA also recognizes that the percentage of slots that the agency proposes to reallocate represents a relatively small percentage of the total number of slots at the airport, particularly since up to 20 of each carrier's slot will not be subject to reversion. Accordingly, the FAA requests comment on whether the percentages proposed under either option are sufficient to ensure the opportunity for new entry and an efficient allocation of slots among all carriers at the airport, such that each slot is allocated to the user who values it the most highly. In addition, the agency seeks input on the appropriate percentages of slots available for auction (both in total and annually) sufficient to assure an efficient allocation of this scarce resource.

Under both options, the time windows for the Limited Slots would be evenly distributed over the day to the extent possible. The duration of each Limited Slot would be assigned by a fair allocation process such that each affected carrier's aggregate lease duration would be approximately equal to that of the other affected carriers. A technical report fully explaining how Limited Slots will be categorized and allocated has been placed in the docket for this rulemaking. Commenters are encouraged to review and comment on that document.

3. Market-Based Reallocation of Capacity

For the first five years of the rule the FAA would conduct an auction of Limited Slots on an annual basis. Under option one, 80 percent of the Limited Slots would be auctioned off over five years, with 20 percent retired. Under option 2, 100 percent of the Limited Slots would be auctioned off over five years. This auction process would guarantee carriers wishing to initiate or extend operations at the airport an opportunity to acquire slots. Each year there would be approximately 14 (option 1) or 36 (option 2) slots available in the auction. Since carriers need pairs of slots, this is equivalent to seven or 18 round-trips per day. Assuming a minimum competitive pattern of service is between two and three round-trips per day, the equivalent of two to nine routes would be available per year. Carriers would be free to supplement their holdings in the secondary market, which the agency believes will be stimulated by this rule.

Under Option 1, the FAA would auction off 16 percent of the Limited Slots annually. Any carrier could bid on the slot, and it would be awarded to the highest responsive bidder. The winning parties could commence operations using the newly acquired slots on the second Sunday of the following March. In the unlikely event no bids were received, the FAA would retire the slot until the next auction. The FAA would retain all auction proceeds. After recouping its costs, the FAA would spend the remainder of the proceeds on congestion and delay management initiatives in the New York City area.

The FAA intends to retire four percent of the Limited Slots annually for the first five years of the rule under this option. Should sufficient efficiencies be realized through delay reduction or capacity enhancing measures, the FAA may decide to auction those Limited Slots rather than retire them. In addition, the FAA may decide to auction slots that had previously been retired as new capacity.

Under Option 2, the FAA would auction off 20 percent of the Limited Slots annually in a blind auction, with the Unrestricted Slots awarded to the highest responsive bidders. The carrier initially holding the Limited Slot would not be able to bid on the slot, and it could not set a minimum bid price. However, that carrier would retain the auction proceeds after the FAA has recouped its costs associated with conducting the auction. As under Option 1, if no bids were received, the FAA would retire the slot until the next auction in the interest of delay mitigation. While carriers would be unable to bid on the slots that they are auctioning, each carrier may negotiate for subleases or transfers from other carriers in the secondary market or by

[16] Of these operations, 48 were allocated to air carriers, 14 were allocated to commuter service, and six were allocated to unscheduled operations.

bidding on other slots concurrently up for auction and held by other carriers.[17]

In response to the NPRM, some carriers urged the FAA to permit complete transparency with respect to the identity of the bidders and their bids in each round of an auction. The FAA believes that such transparency with respect to identity of the bidders and their corresponding bids would encourage gaming of the auction and significantly reduce the economic efficiency of the initial allocation of slots. The FAA also believes that an auction where the identity of the bidders is not known assists new entrants seeking to enter the market.

The FAA does not intend to reallocate slots after the first five years (other than those returned under the rule's use-or-lose provisions) because it believes that ideally slots should transfer from one carrier to another through the secondary market. The FAA is proposing to be actively involved in a limited number of slot transactions during the first five years of the rule to help establish that market. Not only will the auctions help create a market for slots, but all carriers will be able to assess the true market value of a slot. As noted by Delta in its comments to the NPRM, giving carriers with marginally profitable slots a financial incentive to sell (or in this instance sublease) to the highest bidder reduces entry barriers and maximizes the value of the slot. Armed with information on how much a given slot is likely to be worth on the open market, carriers (and their shareholders) will be in a better position to determine whether to continue operating marginally-performing flights or to sublease the corresponding slot. The agency believes that it should not take more than five years for a robust secondary market to develop.

4. New and Returned Capacity

Given the physical constraints at the airport and the carriers' ability to sublease slots if the operations associated with the slots are not financially productive, the FAA anticipates that there will be little new or returned capacity for most of the time the rule is in effect. With the advent of NextGen technology, there may be new capacity in the later years of the rule. To the extent there is any new or returned capacity, the FAA intends to auction off that capacity under both options, and would categorize the slots as Unrestricted Slots.[18]

F. Auction Procedures

The FAA is currently engaged in procuring the services of a contractor to conduct auctions of the proposed Limited Slots.[19] The details regarding the specifics of any potential auction will be disclosed after the contractor has developed and validated an auction process and the FAA is ready to proceed with an auction.[20] In accordance with the agency's Acquisition Management System, the FAA will publicly announce its intent to conduct an auction on a particular date or over the course of a particular period of time. The FAA will also announce its proposed auction procedures and solicit comments on those procedures. The agency will consider the comments and then publish its planned auction procedures. An interested party may protest the procedures up until the date of the auction under 49 U.S.C. 40110(d)(4) and 14 CFR part 17.

The FAA does believe that the auction should be structured to allow for package bidding. With package bidding, each bidder indicates which groups (packages) of slots it wishes to acquire at prices specified by the auctioneer at the beginning of each round of the auction. Given the network nature of the industry, airlines need multiple slots at an airport in order to operate efficiently. Package bidding will ensure that the airlines can use all of the slots that they acquire.

In order to assure that auction participants understand how the auction process works, the FAA anticipates the contractor would have to conduct a training seminar and a mock auction prior to each auction. A single training seminar and mock auction would not suffice since presumably not every carrier will participate in every auction. The auction will also have to be structured to prevent gaming. This would likely be accomplished through the use of activity rules.

Finally, the contractor would have to provide and maintain a secure communication mechanism for conducting the auction and develop a Web site that provides information on the availability of slots and the logistics of the auction.

At present, the FAA is contemplating requiring bidding carriers to provide up-front payments as a prerequisite to participating in the auction and requiring full payment for the slots at the time of award. The Federal Communications Commission (FCC) has experienced problems with bidders who were not financially secure or who were otherwise unwilling or unable to pay for the awards. The upfront payment could also discourage bid-sniping by preventing carriers from adding slots to their bid package beyond the amount of the upfront payment. The FAA recognizes that paying for the entire lease at one time could be expensive; however, it also believes that serious bidders should be able to obtain the requisite financing.

G. Secondary Trading

All slots will have value in the secondary market. To the extent that the secondary market is not mature and the value of slots is not well-known, the auction should inform potential buyers of the value of these slots and stimulate the secondary market. The FAA believes that ultimately the best way to maximize competition is with the development of a robust secondary market. To that end, the agency is not proposing a system of set-asides and exemptions that would be available to new entrants and limited incumbents. We agree with several of the carriers who commented on the NPRM and within the ARC that the system of preferences and exemptions developed under the HDR and AIR–21 may have significantly diluted the viability of the secondary market ostensibly created under the HDR's Buy/Sell Rule. However, we are also unconvinced that these exemptions and set-asides were the only reason the Buy/Sell Rule was less than fully effective. Throughout the years the FAA has received several complaints that carriers were unaware of possible opportunities to buy or lease slots and that incumbent carriers were colluding to keep new entrant carriers out of the airport.

We believe some measures must be taken to assure access to the secondary market. First, we believe all carriers interested in initiating operations at

[17] The FAA will attempt to auction an even number of slots during each hour to provide an opportunity for a carrier to replace a slot that it is auctioning. This may not always be possible.

[18] If any slots were not bid on in the final year of the annual auction, the FAA would retire those slots until it reallocated new or returned capacity. It is unlikely that enough new or returned capacity would be available to justify an annual reallocation.

[19] As indicated in the *Order Limiting Operations at John F. Kennedy International Airport*, 73 FR 3510 (1/18/08) and the *Notice of Proposed Order Limiting Scheduled Operations at Newark Liberty International Airport*, 73 FR 14552 (3/18/08), the FAA intends to auction new or returned capacity, if any, under those orders. The contract would cover auctions at all possible airports. The FAA is not waiting until this rule is finalized to award the contract, because this proposal and the two orders contemplate potentially conducting the first auction before the end of the year.

[20] Since the auction will address the lease of slots awarded by the FAA under its leasing authority rather than under any administrative allocation, notice to interested parties will be governed by applicable procurement law rather than the Administrative Procedure Act.

LaGuardia, or increasing their operations there, should have an opportunity to participate in any transactions. Accordingly, the FAA proposes to (1) permit carriers to include common slots for sale in the auction, organized by the FAA, and (2) establish a bulletin-board system whereby carriers seeking to sublet slots outside the auction process, or to acquire such subleases, would notify the FAA, which would then post the relevant information on its Web site.

If a carrier wishes to include some of its common slots in the auction, these slots will be treated in the same manner as other slots being auctioned by the FAA. The carrier would be able to specify a minimum price for these slots so that it need not give up the slots unless they command a price that the carrier is willing to accept.

The FAA has tentatively decided that transactions via the bulletin-board-system would not have to be blind, and the transaction could include both cash and non-cash payments. While AirTran and ACAA argued in their comments to the NPRM that transparency among parties to the transaction encourages anti-competitive behavior, the FAA finds compelling the comments of other carriers that a blind, cash-only requirement is unduly restrictive. In particular, the FAA agrees with U.S. Airways and Delta that non-cash bids promote competition by enlarging the pool of potential bidders. Thus, non-cash transactions should result in both more bidders and potentially higher bids. However, as noted by United, Northwest Airlines (Northwest), American and Delta, it is critical that the identities of parties be known if non-cash assets are permitted because that is the only way to value those assets. In addition, the non-cash aspect of the transaction would require direct negotiating.

The FAA requests comment on ways that these concerns could be met in a blind secondary market. For example, in the NPRM the FAA proposed a hybrid scheme whereby the initial offer and acceptance would be blind and limited to a cash offer, but the parties could negotiate non-cash assets after the offer had been accepted. The FAA continues to believe that such an approach may be workable. During the posting of the lease and subsequent bidding of the slots, the parties' identities would not be known. Once the auction closed, the FAA would forward the highest bid to the seller without any bidder identification. The seller would have a set number of business days to accept the bid. At that point, the parties' identities would be revealed, and they would have a set period of time to negotiate the possibility of non-cash assets in lieu of money as consideration for the lease. If the parties were unable to come to an agreement, the lease would have to proceed on a cash basis. Other alternatives may also be viable.

The FAA takes to heart the concern raised by some commenters that non-blind transactions could encourage collusion. Regardless of which approach, if any, is ultimately adopted, the Department already has the authority under 49 U.S.C. 41712 to investigate, prohibit, and impose penalties on an air carrier for an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. The Department has consistently held that this authority empowers it to prohibit anticompetitive conduct (1) that violates the antitrust laws, (2) that is not yet serious enough to violate the antitrust laws but may do so in the future, or (3) that, although not a violation of the letter of the antitrust laws, is close to a violation or contrary to their spirit.[21]

In order to assure that the Department can conduct adequate oversight, today's proposal would require carriers to file with the Department a detailed breakdown of all lease terms and asset transfers for each transaction, and the subletting carrier must disclose all bids submitted in response to its solicitation. The slot could not be operated by the acquiring carrier until all documentation has been received, and the FAA has approved the transfer. Within the context of the proposed auction discussion in the NPRM, United suggested that the FAA could publicly disclose non-confidential business information so that all carriers have an assessment of the relative value of the slots that are being traded. We have not included language to this effect in the proposed regulatory text. However, we seek comment on whether it would be helpful for this type of information to be disclosed.

Trades among marketing carriers and one-for-one trades would not have to be advertised. Marketing carriers should not have to open up transactions to the carrier community as a whole any more than a single carrier should have to disclose its scheduling decisions with other carriers. The FAA would approve these transactions, as it has done historically. Same day trades among marketing carriers that address emergency situations such as maintenance problems or other unforeseen operational issues could take place without prior approval by the FAA, but carriers must notify the FAA of the trade within five business days. One-for-one trades among carriers would not be subject to the restrictions of the secondary market because they enhance the operational efficiency of the airport. However, the exchange of slots on a one-for-one basis could not be for consideration.

[21] See *United Airlines, Inc.* v. *Civil Aeronautics Board,* 766 F. 2d 1107, 1112, 1114 (7th Cir. 1985) and cases cited therein; see also H.R. Rep. No. 98–793, 98th Cong., 2d Sess. (1984) at 4–5, *Order 2002–9–2, Complaint of the American Society of Travel Agents, Inc., and Joseph Galloway against United Air Lines, Inc, et al.* (Docket No. OST–99–6410) and *Complaint of The American Society of Travel Agents, Inc., and Hillside Travel, Inc. against Delta Air Lines, et al.* (Docket No. OST–02–12004) (September 4, 2002) at 22–23.

IV. Unscheduled Operations

As proposed in the NPRM, the FAA intends to limit unscheduled operations into and out of LaGuardia during the constrained hours. These operations have been restricted via the LaGuardia Order to six per hour, but the FAA has recently proposed to reduce that number to three. Under today's proposal, reservations would be required to use the airport (except for emergency operations) and could be obtained up to 72 hours in advance.

United requested that scheduled carriers be allowed to ferry aircraft out of LaGuardia for maintenance without having to obtain a reservation for an unscheduled operation as long as the FAA was given advance notice. To the extent ATC can handle additional requests (for example in good weather), it will do so without regard to the reason for the request. In addition, ATC may decide that a single additional flight for maintenance purposes would not introduce any additional delay. However, there is no guarantee that the FAA would accept more than three reservations per hour, and the determination to handle more traffic would likely be made on that day. Reservations for all non-emergency flights would still be required.

The FAA originally believed that there was no need to treat public charter operations differently from other unscheduled operations. Based on comments from the National Air Carrier Association (NACA), the agency has reconsidered its position. The FAA proposes to allow public charter operators to reserve one of the three available allowable operations up to six months in advance. If more than one public charter operation is desired for a given hour, the public charter operator without the advance reservation could attempt to secure a reservation within the three-day window that is available for all other unscheduled operations.

V. Other Issues

A. 30-Minute Allocations

The FAA had originally proposed allocating Operating Authorizations in 15-minute increments. The agency believed that 15-minute increments would minimize congestion from schedule peaking. Four carriers, United, Delta, Northwest and American, suggested that slots should be assigned within 30-minute periods, which is consistent with current practice. The carriers noted that shrinking the window to 15 minutes would have no meaningful, positive impact on congestion, but would have a tremendous negative impact on the ability of carriers to operate at the airport by unduly complicating scheduling practices. They argued that a 15-minute window would lead to more schedule modifications as seasonal block times change, additional paperwork burden for carriers because more trades would be needed, and additional aircraft holdouts on the ramps leading to increased ramp and taxiway congestion. The FAA agrees with the commenters and now proposes slots be assigned in 30-minute windows. The FAA cautions, however, that peaking within the 30-minute windows could lead to increased congestion. The FAA will continue to monitor operations and will address any significant operational issues through discussions with carriers.

B. Limit on Arrivals and Departures

In response to the NPRM, American and The City of New York suggested the final rule should regulate arrivals only. American noted that at O'Hare, the FAA determined delays tend to be more disruptive to arrivals, and the carrier suggested regulating arrivals only will adequately address the congestion problem because for each arrival there would generally be a corresponding departure.

American is correct that the FAA determined there was no need to formally limit departures at O'Hare, and both commenters are correct that, in general, for every arrival there is a departure. However, the timing of those departures does not necessarily correlate with arrivals, and the hub scheduling patterns at O'Hare are different from LaGuardia. ATC also has greater flexibility at O'Hare in determining runway configurations to accommodate arrivals and departures. In addition, the sequencing of flights at LaGuardia is so tight that the FAA does not believe it can merely limit arrivals. LaGuardia is constrained, arguably overly so, throughout the day. Simply limiting arrivals would increase the number of minutes of delay already encountered on a daily basis at the airport. Nor would limiting arrivals ensure that there is relative balance between arrival and departure demand that corresponds to available runway capacity. The agency's experience under the HDR and the LaGuardia Order shows that carriers often make internal scheduling adjustments between arrival and departure slots or trade with other carriers to keep schedules within available capacity. Limiting only arrivals or departures would not promote that balancing of demand. Accordingly, the FAA continues to believe both arrivals and departures should be slot-controlled.

C. Use-or-Lose

For common and limited slots, the FAA is proposing the same use-or-lose requirement that it proposed under the upgauging proposal in the NPRM and the requirement adopted in the LaGuardia Order. For operations not subject to the proposed minimum aircraft size requirement, the FAA proposed an 80 percent usage requirement over a 60-day period, with the usage requirements not applying to new operations for the first 90 days. If the usage requirement were not met, the slots would revert to the FAA and would be retired or auctioned as unrestricted slots in the next auction. The FAA is proposing that unrestricted slots would not be subject to a usage requirement.

In response to the NPRM, the Port Authority argued that the FAA should adopt a 90 percent usage requirement rather than the proposed 80 percent, because the lower number allows a carrier to schedule operations only four days of the week. The Port Authority argued that this type of scheduling was inefficient and should be discouraged. When looking at cancelled flights, the Port Authority claimed that carriers would have no problem meeting the suggested 90 percent usage requirement. In a similar vein, ACAA said that carriers should be required to release weekend and holiday slots that they did not intend to use. The association also argued that the usage requirement should be tied to each scheduled operation (i.e., each slot would be specifically tied to a particular flight). It maintained that the current system of determining usage allows carriers with larger holdings to manipulate their flights so that they meet the usage threshold even though a significant number of flights are cancelled.

Delta argued that the proposed 90 percent usage requirement would be unduly restrictive. United suggested the FAA allow carriers to cancel a scheduled operation and substitute an unscheduled operation like a maintenance ferry or a charter flight. The Port Authority suggested a carrier that failed to meet the usage requirement be allowed to continue to operate the affected flight until used by another carrier and the new carrier should be given 120 days to start new service rather than the proposed 90.

While there is a value to ensuring a limited resource like a slot is used, there are certain actions that a carrier must take to realistically initiate new or expanded service. In the case of subleases acquired through the secondary market, carriers have control over the leases' start and end dates. Accordingly, the FAA believes 90 days is sufficient to initiate new service that results from transactions on the secondary market.

Given the conflicting comments on whether the usage threshold should be set at 80 percent or 90 percent, the FAA specifically requests comment on the appropriate threshold. The Port Authority is correct that a more stringent usage requirement would allow fewer instances where a carrier could cancel a flight; however, the FAA believes that the potential problem raised by the Port Authority is less a function of usage requirements and more a function of carriers manipulating how cancelled flights are reported. Since carriers currently decide which flights to report under a particular Operating Authorization, it is possible for them to distribute flights to multiple Operating Authorizations and still meet the usage requirement. For example, four flights could be distributed over five Operating Authorizations and each Operating Authorization would meet the 80 percent usage requirement.

The FAA believes it is more meaningful to address this problem directly rather than by changing the usage requirement. Simply put, each slot should have a corresponding scheduled operation. Under today's proposal, carriers would be required to report a series of flights under a single slot number rather than in the aggregate. Flight number or other changes made primarily to circumvent the usage requirement will apply against the carrier for calculation of Use-or-Lose. Carriers would be permitted to operate a charter, maintenance, or ferry operation in lieu of a scheduled operation and not have that operation discounted as long as they did not abuse the privilege.

Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this final rule (1) has benefits that justify its costs, is ''significant regulatory action'' as defined in section 3(f)(1) of Executive Order 12866, which is also known as an ''economically significant'' regulatory action, and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would not adversely affect international trade; and (4) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, set forth in this document, are summarized below.

The 2006 NPRM Initial Regulatory Evaluation

Most comments on the Initial Regulatory Evaluation of 2006 NPRM were attributed to cost and benefit estimates of the upgauging requirements and the related analysis of the role of aircraft size in competition and slot allocation. Since the FAA is withdrawing its proposal for upgauging, most of the comments are no longer relevant. See the ''Withdrawal of Upgauging Proposal'' section in today's notice for additional discussion of comments on and the withdrawal of the upgauging requirements. There were several policy related comments that were mentioned in tandem with comments on the regulatory evaluation. We have treated these comments in the ''Discussion of the NPRM'' and ''Proposal to Allocate Limited Capacity at LaGuardia Efficiently'' sections of today's notice.

ATA and Delta commented that the FAA used an unrealistic base case in the 2006 regulatory evaluation. They argued that the FAA used the unlikely assumption that LaGuardia would revert to a situation where there would be no cap on the level of operations and therefore the regulatory evaluation overestimated benefits. They claimed that the realistic baseline from which to estimate costs and benefits would be a cap on LaGuardia operations.

As discussed elsewhere in today's notice the FAA contends that the LaGuardia Order has kept operations from growing since the expiration of the HDR, but the agency has always been clear that the Order is linked to the publication of a final rule. Therefore, the base case from which to compare the cost and benefits of proposed alternatives in terms of delay reduction should not be between the Order and any final rule, but between an unconstrained airport and a final rule. The airport was close to unconstrained in 2000, which is why the FAA used its experience in 2000 for the 2006 NPRM and today's notice. In addition, the New York City area airports experienced nearly unprecedented delays last summer, since JFK and Newark were not constrained and carriers were allowed to add flights at will.

Total Costs and Benefits of This Rulemaking

The FAA estimates that this proposed rule would result in a long-term improvement in the allocation of scarce slot resources at LaGuardia. The estimated present value of net benefits of this rule is between $65 million and $197 million between 2009 and 2019. The costs of the rule, with a present value between $12 million and $23 million, are due to the design, implementation and participation in an auction of slots.[22]

This regulatory impact analysis also assumes as a baseline that in the absence of this rulemaking. The FAA would not otherwise impose a cap on aircraft operations at LaGuardia. Therefore, consistent with the initial Regulatory Evaluation undertaken for the FAA's 2006 NPRM, the agency estimates that, through the long-term implementation of a cap on aircraft operations, this rulemaking would result in a 32 percent reduction in the average delay per operation at LaGuardia relative to the situation with no cap. This reduction in average delay would generate present value net benefits of approximately $2.02 billion between 2009 and 2019. The benefits are estimated by comparing the no-rule scenario (similar to the situation at LaGuardia in 2000) with the proposed cap.

Who Is Potentially Affected by This Rulemaking

- Operators of scheduled and non-scheduled, domestic and international flights, and new entrants who do not yet operate at LaGuardia.
- All communities, including small communities with air service to LaGuardia.
- Passengers of scheduled flights to LaGuardia.
- The Port Authority of New York and New Jersey, which operates the airport.

Key Assumptions

- Base Case: No operating authorizations or caps.
- Cap on operations provides additional delay improvement.
- Option 1: 100 percent of slots held by carriers with fewer than 21 slots would be grandfathered with 10 years of life; for holders with 21 or more slots, 90 percent of slots would be grandfathered with leases of 10 years, two percent would be retired and eight percent would be assigned with shorter leases auctioned over five years.
- Delay improvement in Option 1 due to retirement of approximately one minute per average operation.
- Option 2: Identical to Option 1 except there would be no retirement of slots, and for holders with 21 or more slots, 80 percent would be grandfathered with 10 year leases and 20 percent would be assigned with shorter leases auctioned over five years.
- For the purposes of this evaluation, the effective date is (11/1/08).

Other Important Assumptions

- Discount Rate—7%.
- Assumes 2008 Current Year Dollars.
- Passenger Value of Travel Time—$30.86 per hour.[23]

[22] Present value costs and benefits use a seven percent discount rate. The draft Regulatory Evaluation in the docket for this rulemaking contains additional valuations using a three percent discount rate.

[23] GRA, Incorporated ''Economic Values for FAA Investment and Regulatory Decisions, A Guide'' prepared for the FAA Office of Aviation Policy and Plans (October 3, 2007). Value is weighted using LaGuardia shares of 51 percent leisure and 49 percent business travel.

Alternatives We Have Considered

• No caps (no action): This alternative would have allowed the HDR to expire on January 1, 2007 without replacing it. Based on history, the FAA expected operators would most likely continue to expand operations, further worsening airport delays.

• 2006 NPRM (withdrawal): The 2006 NPRM would have instituted caps, provided for mandatory upgauging, and withdrawn 10 percent of slots annually for reallocation. The FAA is replacing this proposal with the one proposed here.

• Caps: This alternative would permanently impose caps at 75 scheduled operations and three unscheduled operations per hour. It would grandfather all current Operating Authorizations.

• Option 1 + Caps: This alternative would institute caps as above, retire approximately two percent of eligible slots in the interest of reducing delays and reallocate eight percent of eligible capacity via an annual auction over five years.

• Option 2 + Caps: This alternative would institute caps as above, and reallocate 20 percent of eligible slots via an annual auction over five years.

We are requesting comment from industry on the range of alternatives considered.

Benefits of This Rulemaking

The primary benefits of this rulemaking will be due to the delay reduction from the caps on operations and an improvement in the allocation of scarce slot resources through the use of an auction mechanism. In Option 1 of the proposed rulemaking, there will also be some additional benefits due to delay reduction associated with retiring approximately 18 slots. Consumers are likely to benefit from the delay reduction associated with the imposition of caps and the additional retirement of slots under Option 1. Consumers would also benefit from any new service resulting from the reallocation of resources.

Costs of This Rulemaking

The major costs of this proposed rule cover the costs to the public and private sectors of designing, implementing and participating in the auction.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Some of the information requirements in today's notice are similar to those originally proposed in the 2006 notice. The FAA has updated these requirements and summarized them below.

Title: Congestion Management Rule for LaGuardia Airport. *Summary:* The FAA proposes to grandfather the majority of operations at LaGuardia and develop a secondary market by annually auctioning off a limited number of slots. This proposal also contains provisions for use-or-lose and withdrawal for operational need. The FAA proposes to sunset the rule in ten years. More information on the proposed requirements is detailed elsewhere in today's notice.

Use of: The information is reported to the FAA by scheduled operators holding slots. The FAA logs, verifies, and processes the requests made by the operators.

This information is used to allocate, track usage, withdraw, and confirm transfers of slots among the operators and facilitates the buying and selling of slots in the secondary market. The FAA also uses this information in order to maintain an accurate accounting of operations to ensure compliance with the operations permitted under the rule and those actually conducted at the airport.

Respondents: The respondents to the proposed information requirements in today's notice are scheduled carriers with existing service at LaGuardia, carriers that plan to enter the LaGuardia market (by auction or secondary market), and carriers that enter the LaGuardia market in the future. There are currently fourteen (14) carriers with existing scheduled service at LaGuardia.

Frequency: The information collection requirements of the rule involve scheduled carriers notifying the FAA of their use of slots. The carriers must notify the FAA of: (1) Its designation of 50 percent of its Limited Slots; (2) request for confirmation to sublease slots; (3) its consent to transfer slots under the transferring Carrier's marketing control; (4) requests for confirmation of one-for-one slot trades; (5) slot usage (operations); and (6) request for assignment of slots available on a temporary basis.

Annual Burden Estimate: The annual reporting burden for each subsection of the rule is presented below. Annual burden estimates presented in today's notice are based on burden estimates from the 2006 notice.

The burden is calculated by the following formula:

Annual Hourly Burden = (# of respondents) * (time involved) * (frequency of the response).

§ 93.64(c)(3) Categories of Slots: 50 Percent Designation of Limited Slots

(6 carriers) * (80 hours per submittal) = 480 hours

Based on the current allocation of Operating Authorizations and the proposed level of baseline operations each carrier would be grandfathered under today's proposal, we assumed the 6 carriers with the most operations at LaGuardia would expend up to ten days of planning time each, potentially 80 hours, to develop and submit its designation of 50 percent of its Limited Slots. This designation would occur once, ten days after the final rule effective date.

Sections 93.65(c)–(d) and 93.66(a) Initial Assignment of Slots and Assignment of New or Returned Slots

We assumed the 14 carriers operating at LaGuardia will expend time submitting and collecting information to participate in the proposed auctions for slot assignments. The FAA is currently in the process of procuring auction software and services. The FAA will make available burden estimates for information requirements relating to auction participation in a separate notice.

Section 93.68(b)–(f) Sublease and Transfer of Slots

(14 carriers) * (1.5 hours per submittal) * (4 occurrences per year) = 84 hours

Based on burden estimates from the 2006 notice, we assumed the 14 carriers operating at LaGuardia would expend one and one half hours for each occurrence of a lease or transfer of a slot. For each operator, we assumed that a lease or transfer of a slot would occur on average quarterly.

Section 93.69(b) One-for-One Trades of Operating Authorizations

(14 carriers) * (1.5 hours per submittal) * (4 occurrences per year) = 84 hours

Based on burden estimates from the 2006 notice, we assumed the 14 marketing carriers operating at LaGuardia expend one and one half hours for each occurrence of a one-for-one trade of a slot. For each operator, we assumed that a one-for-one trade of a slot would occur quarterly.

Section 93.72(a) Reporting Requirements

(14 carriers) * (1.5 hours per submittal) * (6 occurrences per year) = 126 hours

Based on burden estimates from the 2006 notice, we assumed the 14 carriers operating at LaGuardia expend one and one half hours every two months of the data required by § 93.72(a).

Section 93.73(d)–(e) Administrative Provisions

(14 carriers) * (1.5 hours per submittal) * (4 occurrence per year) = 84 hours

Based on burden estimates from the 2006 notice, we assumed the 14 carriers operating at LaGuardia expend one and one half hours every quarter for administrative provisions.

Summary

Total First Year Hourly Reporting Burden—858 Hours.

Total Recurring Annual Hourly Reporting Burden (after first year)—378 Hours.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirements are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by [insert date], and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, via facsimile at (202) 395–6974, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–3540 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the agency determines that it would, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. Such a determination has been made for this proposed rule.

The proposed rule affects all 26 scheduled operators at LGA. Based on a review of the number of employees for each scheduled operator, the FAA found none of the scheduled operators at LGA are considerd small entities by Small Buinsess Administration size standards (in this case, firms with 1,500 or fewer employees). In the NPRM, the FAA identified two carriers that it believed could qualify as a small business under the SBA size standards. The agency has reevaluated the size of all carriers currently operating at LaGuardia and has determined that none of them are small businesses.

Using Enhanced Traffic Management System (ETMS) data, FAA has determined that there would be approximately 70 identifiable unscheduled operators at LGA which could be affected by this rule. While some of these operators may be small businesses, we do not believe they would be impacted signficantly by the proposed rule. While there would be three fewer slots per hour under our proposal, these operators seldomly use these slots and typically have greater flexibility to adjust operations than do scheduled operators.

Using 2007 Census data, the FAA also reviewed whether there would be interruptions to service to communities of less than 50,000 in population. We do not know if there would be any service interruptions as a result of the rule. We have reviewed population statistics for every city served from LGA in January 2007 (the base for allocation of slots under the proposed rule) and found none with fewer than 50,000 in population.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would impose no costs on international entities and thus have a no trade impact. Canadian entities are the only foreign operators at LaGuardia and their slots are protected by a bilateral aviation agreement and not affected by the rule. They might benefit from the rule if they choose to participate in the proposed auction to acquire additional slots.

Unfunded Mandate Assessment

The Unfunded Mandate Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' identifies FAA actions that are normally categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances The FAA has determined that this rulemaking qualifies for the categorical exclusions identified in paragraph 312d ''Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking and issuance of Final Rules) covering administration or procedural requirements (does not include Air Traffic procedures; specific Air traffic procedures that are categorically excluded are identified under paragraph 311 of this Order)'' and paragraph 312f, ''Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment).'' It has further been determined that no extraordinary circumstances exist that may cause a significant impact and therefore no further environmental review is required. The FAA has documented this categorical exclusion determination. A copy of the determination and underlying documents has been included in the Docket for this rulemaking.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because while a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/*; or

3. Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (air).

VII. Draft Regulatory Text

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

1. The authority for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

Proposed Amendment—Option 1

2. Subpart C is added to read as follows:

Subpart C—LaGuardia Airport Traffic Rules

Sec.

Subpart C—LaGuardia Airport Traffic Rules

§ 93.61 Applicability.

(a) This subpart prescribes the air traffic rules for the arrival and departure of aircraft used for scheduled and unscheduled service, other than helicopters, at LaGuardia Airport (LaGuardia).

(b) This subpart also prescribes procedures for the assignment, transfer, sublease and withdrawal of Slots issued by the FAA for scheduled operations at LaGuardia.

(c) The provisions of this subpart apply to LaGuardia during the hours of 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday. No person shall operate any scheduled arrival or departure into or out of LaGuardia during such hours without first obtaining a Slot in accordance with this subpart. No person shall conduct an Unscheduled Operation to or from LaGuardia during such hours without first obtaining a Reservation.

(d) Carriers that have Common Ownership shall be considered a single air carrier for purposes of this rule.

(e) The Slots assigned under this subpart terminate at 10 p.m. on March 9, 2019.

§ 93.62 Definitions.

For purposes of this subpart, the following definitions apply:

Airport Reservation Office (ARO) is an operational unit of the FAA's David J. Hurley Air Traffic Control System Command Center. It is responsible for the administration of reservations for unscheduled operations at LaGuardia.

Base of Operations are those common slots held by a carrier at LaGuardia on [final rule effective date], that do not exceed 20 operations per day and all slots guaranteed under The Air Transport Agreement between the Government of the United States of America and the Government of Canada.

Carrier is a U.S. or foreign air carrier with authority to conduct scheduled service under Parts 121, 129, or 135 of this chapter and the appropriate economic authority for scheduled service under 14 CFR chapter II and 49 U.S.C. chapter 411.

Common Ownership with respect to two or more carriers means having in common at least 50 percent beneficial ownership or control by the same entity or entities.

Common Slot (C-slot) is a slot that is allocated by the FAA as a lease under its cooperative agreement authority for the length of this rule.

Enhanced Computer Voice Reservation System (e-CVRS) is the system used by the FAA to make arrival and/or departure reservations for unscheduled operations at LaGuardia and other designated airports.

Limited Slot (L-slot) is a slot, the lease for which expires prior to the expiration of this rule for subsequent allocation by the FAA as an unrestricted slot.

Public Charter is defined in 14 CFR 380.2 as a one-way or roundtrip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a public charter operator.

Public Charter Operator is defined in 14 CFR 380.2 as a U.S. or foreign public charter operator.

Reservation is an authorization received by a carrier or other operator of an aircraft, excluding helicopters, in accordance with procedures established by the FAA to operate an unscheduled arrival or departure on a particular day of the week during a specific 30-minute period.

Scheduled Operation is the arrival or departure segment of any operation regularly conducted by a carrier between LaGuardia and another point regularly served by that carrier.

Slot is the operational authority assigned by the FAA to a carrier to conduct one scheduled arrival or departure operation at LaGuardia on a particular day of the week during a specific 30-minute period.

Unrestricted Slot (U-slot) is a slot that is allocated to a carrier by the FAA via the auction of a lease.

Unscheduled Operation is an arrival or departure segment of any operation that is not regularly conducted by a carrier or other operator of an aircraft, excluding helicopters, between LaGuardia and another service point. The following types of carrier operations shall be considered unscheduled operations for the purposes of this rule: public, on-demand, and other charter flights; hired aircraft service; extra sections of scheduled flights; ferry flights; and other non-passenger flights.

§ 93.63 Slots for scheduled arrivals and departures.

(a) During the hours of 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday, no person shall operate any scheduled arrival or departure into or out of LaGuardia without first obtaining a Slot in accordance with this subpart.

(b) Except as otherwise established by the FAA under paragraph (c) of this section, the number of Slots shall be limited to no more than seventy-five (75) per hour. The number of Slots may not exceed 38 in any 30-minute period, and 75 in any 60-minute period. The number of arrival and departure slots in any period may be adjusted by the FAA as necessary based on the actual or potential delays created by such number or other considerations relating to congestion, airfield capacity and the air traffic control system.

(c) Notwithstanding paragraph (b) of this section, the Administrator may increase the number of Slots based on a review of the following:

(1) The number of delays;

(2) The length of delays;

(3) On-time arrivals and departures;

(4) The number of actual operations;

(5) Runway utilization and capacity plans; and

(6) Other factors relating to the efficient management of the National Airspace System.

§ 93.64 Categories of Slots.

(a) Each Slot shall be designated as a Common Slot, Limited Slot or Unrestricted Slot and shall be assigned to the Carrier under a lease agreement. A lease for a Common or Limited Slot shall be assigned via a cooperative agreement. A lease for an Unrestricted Slot shall be awarded via an auction.

(b) *Common Slots.* (1) All Slots within any Carrier's Base of Operations as determined on [final rule effective date] shall be designated as Common Slots.

(2) Ten percent of the Slots at LaGuardia on [final rule effective date] not otherwise designated as Common Slots under paragraph (b) (1) of this section shall be designated as Limited Slots or Unrestricted Slots. All other Slots shall be designated as Common Slots.

(c) *Limited Slots.* Those Slots assigned to a Carrier subject to return to the FAA under § 93.65(c) and (d) shall be designated as Limited Slots until the date of their reassignment by the FAA as Unrestricted Slots or their retirement by the FAA. A Carrier may continue to use a Limited Slot that has reverted to the FAA until the second Sunday in the following March.

(1) In hours where there are more than 75 operations, the FAA shall designate the excess Slots as Limited Slots and will retire them in accordance with § 93.65(d).

(2) Each Carrier with a total number of daily operations at LaGuardia in excess of its Base of Operations, will be notified by [effective date of the final rule] which of its Slots have been designated as Limited Slots under paragraph (c)(1) of this section and how many of its remaining Slots will be designated as Limited Slots pursuant to paragraphs (c)(3) and (4) of this section.

(3) A Carrier shall designate 50 percent of its Limited Slots. The Carrier must notify the FAA of its designation by [date 10 days after the final rule effective date].

(4) The FAA will designate the remaining Limited Slots, excluding those hours in which two or more Slots have been designated as Limited Slots by the Carriers.

(5) No later than [date 20 days after the final rule effective date], the FAA will publish a list of all Limited Slots and the dates upon which they will expire.

(d) *Unrestricted Slots.* Unrestricted Slots are Slots acquired by a Carrier through a lease with the FAA awarded via an auction. Unrestricted Slots are not subject to withdrawal by the FAA.

§ 93.65 Initial assignment of Slots.

(a) Except as provided for under paragraphs (b) and (c) of this section, any Carrier allocated operating rights under the Order, Operating Limitations at New York LaGuardia Airport, during the week of January 7–13, 2007, as evidenced by the FAA's records, will be assigned corresponding Slots in 30-minute periods consistent with the limits under § 93.63(b). If necessary, the FAA may utilize administrative measures such as voluntary measures or a lottery to re-time the assigned Slots within the same hour to meet the 30-minute limits under § 93.63(b). The FAA Vice President, System Operations Services, is the final decision-maker for determinations under this section.

(b) If a Carrier was allocated operating rights under the Order Limiting Operations at LaGuardia airport during the week of January 7–13, 2007, but the operating rights were held by another Carrier, then the corresponding Slots will be assigned to the Carrier that held the operating rights for that period, as evidenced by the FAA's records.

(c) On [date 35 days after the effective date] and every year thereafter through 2012, sixteen (16) percent of the total number of Limited Slots shall revert to the FAA in accordance with the schedule published under § 93.64(c)(5) and be auctioned as Unrestricted Slots by the FAA. Any Slot receiving no responsive bids will be retired until the next auction. An affected Carrier will be allowed to use the Limited Slot until the following second Sunday in March.

(d) Starting March 8, 2009 and on the second Sunday in March every year thereafter through 2013, the FAA will retire four percent of the total number of Limited Slots returned to the FAA under § 93.64(c). Based on the criteria set forth in § 93.63(c), the Administrator may, at his discretion, auction Slots scheduled for retirement that year or auction retired Slots as new capacity.

§ 93.66 Assignment of new or returned Slots.

(a) New capacity or capacity returned to the FAA pursuant to the provisions of § 93.70 will be reassigned by the FAA via an auction conducted pursuant to § 93.65(c). Slots acquired from the FAA under the auction proceeding shall be designated as Unrestricted Slots.

(b) The FAA may decide to accumulate a quantity of Slots prior to conducting an auction.

§ 93.67 Reversion and withdrawal of Slots.

(a) This section does not apply to Unrestricted Slots.

(b) A Carrier's Common Slots or Limited Slots revert back to the FAA 30 days after the Carrier has ceased all operations at LaGuardia for any reasons other than a strike.

(c) The FAA may retime, withdraw or temporarily suspend Common Slots and Limited Slots at any time to fulfill operational needs.

(d) Common Slots and Limited Slots will be withdrawn in accordance with the priority list established under § 93.73.

(e) Except as otherwise provided in paragraph (a) of this section, the FAA will notify an affected Carrier before withdrawing or temporarily suspending a Common Slot or Limited Slot and specify the date by which operations under the Common Slot or Limited Slot must cease. The FAA will provide at least 45 days notice unless otherwise required by operational needs.

(f) Any Common Slot or Limited Slot that is temporarily withdrawn under this paragraph will be reassigned, if at all, only to the Carrier from which it was withdrawn, provided the Carrier continues to conduct Scheduled Operations at LaGuardia.

§ 93.68 Sublease and transfer of Slots.

(a) A Carrier may sublease its Slots to another Carrier in accordance with this section and subject to the provisions of the Carrier's lease agreement with the FAA.

(b) A Carrier must provide notice to the FAA to sublease a Slot. Such notice must contain: The Slot number and time, effective dates and, if appropriate, the duration of the lease. The Carrier may also provide the FAA with a minimum bid price.

(c) The FAA will post a notice of the offer to sublease the Slot and relevant details on the FAA Web site at *http://www.faa.gov.* An opening date, closing date and time by which bids must be received will be provided.

(d) Upon consummation of the transaction, written evidence of each Carrier's consent to sublease must be provided to the FAA, as well as all bids received and the terms of the sublease, including but not limited to:

(1) The names of all bidders and all parties to the transaction;

(2) The offered and final length of the sublease;

(3) The consideration offered by all bidders and provided by the sublessee.

(e) The Slot may not be used until the conditions of paragraph (d) of this section have been met, and the FAA provides notice of its approval of the sublease.

(f) A Carrier may transfer a Slot to another Carrier that conducts operations at LaGuardia solely under the transferring Carrier's marketing control, including the entire inventory of the flight. Each party to such transfer must provide written evidence of its consent to the transfer and the FAA must confirm and approve these transfers in writing prior to the effective date of the transaction. However, the FAA will approve transfers under this paragraph up to five business days after the actual operation to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA Vice President, System Operations Services is the final decision maker for any determinations under this section.

(g) A Carrier wishing to sublease a Slot via an FAA auction under § 93.65(c), rather than pursuant to this section may do so. The Carrier shall retain the proceeds and the Slot shall retain the same designation that it had prior to the Carrier placing it up for auction.

§ 93.69 One-for-one trade of Slots.

(a) A Carrier may trade a Slot with another Carrier on a one-for-one basis.

(b) Written evidence of each Carrier's consent to the trade must be provided to the FAA.

(c) Each recipient of the trade may not use the acquired Slot until written confirmation has been received from the FAA.

(d) Carriers participating in a one-for-one trade must certify to the FAA that no consideration or promise of consideration was provided by either party to the trade.

§ 93.70 Minimum usage requirements.

(a) This section does not apply to Unrestricted Slots.

(b) Any Common Slot or Limited Slot that is not used at least 80 percent of the time over a consecutive two-month period will be withdrawn by the FAA.

(c) Paragraph (b) of this section does not apply to the first 90-day period after

assignment of a Common Slot or Limited Slot through a sublease.

(d) The FAA may waive the requirements of paragraph (b) of this section in the event of a highly unusual and unpredictable condition which is beyond the control of the Carrier and which affects Carrier operations for a period of five or more consecutive days. Examples of conditions which could justify a waiver under this paragraph are weather conditions that result in the restricted operation of the airport for an extended period of time or the grounding of an aircraft type.

(e) The FAA will treat as used any Common Slot or Limited Slot held by a Carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday of January.

§ 93.71 Unscheduled Operations.

(a) During the hours of 6 a.m. through 9:59 p.m., Monday through Friday, and 12 p.m. through 9:59 p.m. on Sunday, no person may operate an aircraft other than a helicopter to or from LaGuardia unless he or she has received, for that Unscheduled Operation, a Reservation that is assigned by the Airport Reservation Office (ARO) or in the case of Public Charters, in accordance with the procedures in paragraph (d) of this section. Requests for Reservations will be accepted through the e-CVRS beginning 72 hours prior to the proposed time of arrival to or departure from LaGuardia. Additional information on procedures for obtaining a Reservation is available on the Internet at *http://www.fly.faa.gov/ecvrs.*

(b) Three Reservations are available per hour, including those assigned to Public Charter operations under paragraph (d) of this section. The ARO will assign Reservations on a 30-minute basis.

(c) The ARO will receive and process all Reservation requests for unscheduled arrivals and departures at LaGuardia. Reservations are assigned on a ''first-come, first-served'' basis determined by the time the request is received at the ARO. Reservations must be cancelled if they will not be used as assigned.

(d) One Reservation per hour will be available for allocation to Public Charter operations prior to the 72-hour Reservation window in paragraph (a) of this section.

(1) The Public Charter Operator may request a reservation up to six months in advance of the date of flight operation. Reservation requests should be submitted to Federal Aviation Administration, Slot Administration Office, AGC–200, 800 Independence Avenue, SW., Washington, DC 20591. Submissions may be made via facsimile to (202) 267–7277 or by e-mail to *7-awa-slotadmin@faa.gov.*

(2) The Public Charter Operator must certify that its prospectus has been accepted by the Department of Transportation in accordance with 14 CFR part 380.

(3) The Public Charter Operator must identify the call sign/flight number or aircraft registration number of the direct air carrier, the date and time of the proposed operation(s), the airport served immediately prior to or after LaGuardia, and aircraft type. Any changes to an approved Reservation must be approved in advance by the Slot Administration Office.

(4) If Reservations under paragraph (d)(1) of this section have already been allocated, the Public Charter Operator may request a Reservation under paragraph (a) of this section.

(e) The filing of a request for a Reservation does not constitute the filing of an IFR flight plan as required by regulation. The IFR flight plan may be filed only after the Reservation is obtained, must include the Reservation number in the ''Remarks'' section, and must be filed in accordance with FAA regulations and procedures.

(f) Air Traffic Control will accommodate declared emergencies without regard to Reservations. Non-emergency flights in direct support of national security, law enforcement, military aircraft operations, or public-use aircraft operations may be accommodated above the Reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate waiver will be available on the Internet at *http://www.fly.faa.gov/ecvrs.*

(g) Notwithstanding the limits in paragraph (b) of this section, if the Air Traffic Organization determines that air traffic control, weather and capacity conditions are favorable and significant delay is unlikely, the FAA may determine that additional Reservations may be accommodated for a specific time period. Unused Slots may also be made available temporarily for Unscheduled Operations. Reservations for additional operations must be obtained through the ARO.

(h) Reservations may not be bought, sold or leased.

§ 93.72 Reporting requirements.

(a) Within 14 days after the last day of the two-month period beginning March 8, 2009 and every two months thereafter, each Carrier holding a Common Slot or Limited Slot must report, in a format acceptable to the FAA, the following information for each Common Slot or Limited Slot:

(1) The Slot number, time, and arrival or departure designation;

(2) The operating Carrier;

(3) The date and scheduled time of each of the operations conducted pursuant to the Slot, including the flight number and origin/destination;

(4) The aircraft type identifier.

(b) The FAA may withdraw the Slot of any Carrier that does not meet the reporting requirements of paragraph (a) of this section.

§ 93.73 Administrative provisions.

(a) Each Slot shall be assigned a number for administrative convenience.

(b) The FAA will assign priority numbers by random lottery for Common Slots and Limited Slots at LaGuardia. Each Common Slot and Limited Slot will be assigned a withdrawal priority number, and the 30-minute time period for the Common Slot or Limited Slot, frequency, and the arrival or departure designation.

(c) If the FAA determines that operations need to be reduced for operational reasons, the lowest assigned priority number Common Slot or Limited Slot will be the last withdrawn.

(d) Any Slot available on a temporary basis may be assigned by the FAA to a Carrier on a non-permanent, first-come, first-served basis subject to permanent assignment under this subpart. Any remaining Slots may be made available for Unscheduled Operations on a non-permanent basis and will be assigned under the same procedures applicable to other operating Reservations.

(e) All transactions under this subpart must be in a written or electronic format approved by the FAA.

Proposed Amendment: Option 2

3. Subpart C is added to read as follows:

Subpart C—LaGuardia Airport Traffic Rules

Sec.

§ 93.61 Applicability.

(a) This subpart prescribes the air traffic rules for the arrival and departure of aircraft used for scheduled and

unscheduled service, other than helicopters, at LaGuardia Airport (LaGuardia).

(b) This subpart also prescribes procedures for the assignment, transfer, sublease and withdrawal of Slots issued by the FAA for scheduled operations at LaGuardia.

(c) The provisions of this subpart apply to LaGuardia during the hours of 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday. No person shall operate any scheduled arrival or departure into or out of LaGuardia during such hours without first obtaining a Slot in accordance with this subpart. No person shall conduct an Unscheduled Operation to or from LaGuardia during such hours without first obtaining a Reservation.

(d) Carriers that have Common Ownership shall be considered a single air carrier for purposes of this rule.

(e) The Slots assigned under this subpart terminate at 10 p.m. on March 9, 2019.

§ 93.62 Definitions.

For purposes of this subpart, the following definitions apply:

Airport Reservation Office (ARO) is an operational unit of the FAA's David J. Hurley Air Traffic Control System Command Center. It is responsible for the administration of reservations for unscheduled operations at LaGuardia.

Base of Operations are those common slots held by a carrier on [final rule effective date], that do not exceed 20 operations per day and all slots guaranteed under The Air Transport Agreement between the Government of the United States of America and the Government of Canada.

Carrier is a U.S. or foreign air carrier with authority to conduct scheduled service under Parts 121, 129, or 135 of this chapter and the appropriate economic authority for scheduled service under 14 CFR chapter II and 49 U.S.C. chapter 411.

Common Ownership with respect to two or more carriers means having in common at least 50 percent beneficial ownership or control by the same entity or entities.

Common Slot (C-slot) is a slot that is allocated by the FAA as a lease under its cooperative agreement authority for the length of this rule.

Enhanced Computer Voice Reservation System (e-CVRS) is the system used by the FAA to make arrival and/or departure reservations for unscheduled operations at LaGuardia and other designated airports.

Limited Slot (L-slot) is a slot, the lease for which must be transferred to another carrier by the holder of the limited slot as an unrestricted slot prior to the expiration of this rule.

Public Charter is defined in 14 CFR 380.2 as a one-way or roundtrip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a public charter operator.

Public Charter Operator is defined in 14 CFR 380.2 as a U.S. or foreign public charter operator.

Reservation is an authorization received by a carrier or other operator of an aircraft, excluding helicopters, in accordance with procedures established by the FAA to operate an unscheduled arrival or departure on a particular day of the week during a specific 30-minute period.

Scheduled Operation is the arrival or departure segment of any operation regularly conducted by a carrier between LaGuardia and another point regularly served by that carrier.

Slot is the operational authority assigned by the FAA to a carrier to conduct one scheduled arrival or departure operation at LaGuardia on a particular day of the week during a specific 30-minute period.

Unrestricted Slot (U-slot) is a slot that is assigned to another carrier by the holder of a limited slot pursuant to the mandatory lease transfer provisions of this subpart.

Unscheduled Operation is an arrival or departure segment of any operation that is not regularly conducted by a carrier or other operator of an aircraft, excluding helicopters, between LaGuardia and another service point. The following types of carrier operations shall be considered unscheduled operations for the purposes of this rule: public, on-demand, and other charter flights; hired aircraft service; extra sections of scheduled flights; ferry flights; and other non-passenger flights.

§ 93.63 Slots for scheduled arrivals and departures.

(a) During the hours of 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday, no person shall operate any scheduled arrival or departure into or out of LaGuardia during such hours without first obtaining a Slot in accordance with this subpart.

(b) Except as otherwise established by the FAA under paragraph (c) of this section, the number of Slots shall be limited to no more than seventy-five (75) per hour. The number of Slots may not exceed 38 in any 30-minute period, and 75 in any 60-minute period. The number of arrival and departure Slots in any period may be adjusted by the FAA as necessary based on the actual or potential delays created by such number or other considerations relating to congestion, airfield capacity and the air traffic control system.

(c) Notwithstanding paragraph (b) of this section, the Administrator may increase the number of Slots based on a review of the following:

(1) The number of delays;

(2) The length of delays;

(3) On-time arrivals and departures;

(4) The number of actual operations;

(5) Runway utilization and capacity plans; and

(6) Other factors relating to the efficient management of the National Airspace System.

§ 93.64 Categories of Slots.

(a) Each Slot shall be designated as a Common Slot, Limited Slot or Unrestricted Slot and shall be assigned to the Carrier under a lease agreement. A lease for a Common Slot or Limited Slot shall be assigned via a cooperative agreement. A lease for an Unrestricted Slot shall be awarded via an auction.

(b) *Common Slots.* (1) All Slots within any Carrier's Base of Operations, as determined on [final rule effective date], shall be designated as Common Slots.

(2) Twenty percent of the Slots at LaGuardia on [final rule effective date] not otherwise designated as Common Slots under paragraph (b)(1) of this section shall be designated as Limited Slots or Unrestricted Slots. All other Slots shall be designated as Common Slots.

(c) *Limited Slots.* Those Slots assigned to a Carrier subject to return to the FAA under § 93.65(c) shall be designated as Limited Slots until they are transferred to another Carrier under those provisions. A Carrier may continue to use a Limited Slot until reassigned to another Carrier as an Unrestricted Slot.

(1) Each Carrier with a total number of daily operations at LaGuardia in excess of its Base of Operations, will be notified by [effective date of the final rule] how many of its slots will be designated as Limited Slots pursuant to paragraphs (c)(2) and (3) of this section.

(2) A Carrier shall designate 50 percent of its Limited Slots. The Carrier must notify the FAA of its designation by [date 10 days after the final rule effective date].

(3) The FAA will designate the remaining Limited Slots, excluding those hours in which two or more Slots have been designated as Limited Slots by the Carriers.

(4) No later than [date 20 days after the final rule effective date], the FAA

will publish a list of all Limited Slots and the dates by which they will expire.

(d) Unrestricted Slots are those Slots acquired by a Carrier through a lease with the FAA awarded via an auction. Unrestricted Slots are not subject to withdrawal by the FAA.

§ 93.65 Initial assignment of Slots.

(a) Except as provided for under paragraphs (b) and (c) of this section, any Carrier allocated operating rights under the Order, Operating Limitations at New York LaGuardia Airport, as amended during the week of January 7–13, 2007, as evidenced by the FAA's records, will be assigned corresponding Slots in 30-minute periods consistent with the limits under § 93.63(b). If necessary, the FAA may utilize administrative measures such as voluntary measures or a lottery to re-time the assigned Slots within the same hour to meet the 30-minute limits under § 93.63(b). The FAA Vice President, System Operations Services, is the final decision-maker for determinations under this section.

(b) If a Carrier was allocated operating rights under the Order Limiting Operations at LaGuardia airport during the week of January 7–13, 2007, but the operating rights were held by another Carrier, then the corresponding Slots will be assigned to the Carrier that held the operating rights for that period, as evidenced by the FAA's records.

(c) On [date 35 days after the effective date] and every year thereafter through 2012, twenty (20) percent of the total number of Limited Slots identified on [date 20 days after the effective date] shall revert to the FAA in accordance with the schedule published under § 93.64(c)(4) and be auctioned as Unrestricted Slots by the FAA and subsequently transferred to another Carrier, effective no later than the following second Sunday in March.

(1) The auction shall be blind, and only cash may be bid.

(2) The holder of a Limited Slot may not bid on its own Slots.

(3) The holder of a Limited Slot shall retain all proceeds from the transaction.

(4) The auction shall be conducted by the FAA, which will dictate all procedures related to the auction, including but not limited to the requirement that the Carrier may not specify a minimum bid price.

(5) In the event no Carrier bids on the Slot, the FAA will retire it until the next auction.

(6) The Carrier holding a Limited Slot will be allowed to use the Slot until the following second Sunday in March.

§ 93.66 Assignment of new or returned Slots.

(a) New capacity or capacity returned to the FAA pursuant to the provisions of § 93.70 will be reassigned by the FAA via an auction conducted pursuant to § 93.65(c). Slots acquired from the FAA under this section shall be designated as Unrestricted Slots.

(b) The FAA may decide to accumulate a quantity of Slots prior to conducting a auction.

§ 93.67 Reversion and withdrawal of Slots.

(a) This section does not apply to Unrestricted Slots.

(b) A Carrier's Common Slots and Limited Slots revert back to the FAA 30 days after the Carrier has ceased all operations at LaGuardia for any reasons other than a strike.

(c) The FAA may retime, withdraw or temporarily suspend Common Slots and Limited Slots at any time to fulfill operational needs.

(d) Common Slots and Limited Slots will be withdrawn in accordance with the priority list established under § 93.73.

(e) Except as otherwise provided in paragraph (b) of this section, the FAA will notify an affected Carrier before withdrawing or temporarily suspending a Common Slot or Limited Slot and specify the date by which operations under the Common Slot or Limited Slot must cease. The FAA will provide at least 45 days notice unless otherwise required by operational needs.

(f) Any Common Slot or Limited Slot that is temporarily withdrawn under this paragraph will be reassigned, if at all, only to the Carrier from which it was withdrawn, provided the Carrier continues to conduct Scheduled Operations at LaGuardia.

§ 93.68 Sublease and transfer of Slots.

(a) Carriers may sublease Slots to another Carrier in accordance with this section and subject to the provisions of the Carrier's lease agreement with the FAA.

(b) A Carrier must provide notice to the FAA to sublease a Slot. Such notice must contain: The Slot number and time, effective dates and, if appropriate, the duration of the lease. The Carrier may also provide the FAA with a minimum bid price.

(c) The FAA will post a notice of the offer to sublease the Slot and relevant details on the FAA Web site at *http://www.faa.gov.* An opening date, closing date and time by which bids must be received will be provided.

(d) Upon consummation of the transaction, written evidence of each Carrier's consent to sublease must be provided to the FAA, as well as all bids received and the terms of the sublease, including but not limited to:

(1) The names of all bidders and all parties to the transaction;

(2) The offered and final length of the sublease;

(3) The consideration offered by all bidders and provided by the sublessee.

(e) The Slot may not be used until the conditions of paragraph (d) of this section have been met, and the FAA provides notice of its approval of the sublease.

(f) A Carrier may transfer a Slot to another Carrier that conducts operations at LaGuardia solely under the transferring Carrier's marketing control, including the entire inventory of the flight. Each party to such transfer must provide written evidence of its consent to the transfer and the FAA must confirm and approve these transfers in writing prior to the effective date of the transaction. However, the FAA will approve transfers under this paragraph up to five business days after the actual operation to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA Vice President, System Operations Services is the final decision maker for any determinations under this section.

(g) A Carrier wishing to sublease a Slot via an FAA auction under § 93.65(c), rather than pursuant to this section may do so. The Carrier shall retain the proceeds and the Slot shall retain the same designation that it had prior to the Carrier placing it up for auction.

§ 93.69 One-for-one trade of Slots.

(a) A Carrier may trade a Slot with another Carrier on a one-for-one basis.

(b) Written evidence of each Carrier's consent to the transfer must be provided to the FAA.

(c) Each recipient of the trade may not use the acquired Slot until written confirmation has been received from the FAA.

(d) Carriers participating in a one-for-one trade must certify to the FAA that no consideration or promise of consideration was provided by either party to the trade.

§ 93.70 Minimum usage requirements.

(a) This section does not apply to Unrestricted Slots.

(b) Any Common Slot or Limited Slot that is not used at least 80 percent of the time over a consecutive two-month period will be withdrawn by the FAA.

(c) Paragraph (b) of this section does not apply to the first 90-day period after assignment of Common Slots or Limited Slots through a sublease.

(d) The FAA may waive the requirements of paragraph (b) of this section in the event of a highly unusual and unpredictable condition which is beyond the control of the Carrier and which affects Carrier operations for a period of five or more consecutive days. Examples of conditions which could justify a waiver under this paragraph are weather conditions that result in the restricted operation of the airport for an extended period of time or the grounding of an aircraft type.

(e) The FAA will treat as used any Common Slot or Limited Slot held by a Carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Sunday of January.

§ 93.71 Unscheduled Operations.

(a) During the hours of 6 a.m. through 9:59 p.m., Monday through Friday, and 12 p.m. through 9:59 p.m. on Sunday, no person may operate an aircraft other than a helicopter to or from LaGuardia unless he or she has received, for that Unscheduled Operation, a Reservation that is assigned by the Airport Reservation Office (ARO) or in the case of Public Charters, in accordance with the procedures in paragraph (d) of this section. Requests for Reservations will be accepted through the e-CVRS beginning 72 hours prior to the proposed time of arrival to or departure from LaGuardia. Additional information on procedures for obtaining a Reservation is available on the Internet at *http://www.fly.faa.gov/ecvrs.*

(b) Three Reservations are available per hour, including those assigned to Public Charter operations pursuant to paragraph (d) of this section. The ARO will assign Reservations on a 30-minute basis.

(c) The ARO will receive and process all Reservation requests for unscheduled arrivals and departures at LaGuardia. Reservations are assigned on a ''first-come, first-served'' basis determined by the time the request is received at the ARO. Reservations must be cancelled if they will not be used as assigned.

(d) One Reservation per hour will be available for allocation to Public Charter operations prior to the 72-hour Reservation window in paragraph (a) of this section.

(1) The Public Charter Operator may request a Reservation up to six months in advance of the date of flight operation. Reservation requests should be submitted to Federal Aviation Administration, Slot Administration Office, AGC–200, 800 Independence Avenue, SW., Washington, DC 20591. Submissions may be made via facsimile to (202) 267–7277 or by e-mail to *7-awa-slotadmin@faa.gov.*

(2) The Public Charter Operator must certify that its prospectus has been accepted by the Department of Transportation in accordance with 14 CFR part 380.

(3) The Public Charter Operator must identify the call sign/flight number or aircraft registration number of the direct air carrier, the date and time of the proposed operation(s), the airport served immediately prior to or after LaGuardia, and aircraft type. Any changes to an approved Reservation must be approved in advance by the Slot Administration Office.

(4) If Reservations under paragraph (d)(1) of this section have already been allocated, the Public Charter Operator may request a Reservation under paragraph (a) of this section.

(e) The filing of a request for a Reservation does not constitute the filing of an IFR flight plan as required by regulation. The IFR flight plan may be filed only after the Reservation is obtained, must include the Reservation number in the ''Remarks'' section, and must be filed in accordance with FAA regulations and procedures.

(f) Air Traffic Control will accommodate declared emergencies without regard to Reservations. Non-emergency flights in direct support of national security, law enforcement, military aircraft operations, or public-use aircraft operations may be accommodated above the Reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate waiver will be available on the Internet at *http://www.fly.faa.gov/ecvrs.*

(g) Notwithstanding the limits in paragraph (b) of this section, if the Air Traffic Organization determines that air traffic control, weather and capacity conditions are favorable and significant delay is unlikely, the FAA may determine that additional Reservations may be accommodated for a specific time period. Unused Slots may also be made available temporarily for Unscheduled Operations. Reservations for additional operations must be obtained through the ARO.

(h) Reservations may not be bought, sold or leased.

§ 93.72 Reporting requirements.

(a) Within 14 days after the last day of the two-month period beginning March 8, 2009, and every two months thereafter, each Carrier holding a Common Slot or Limited Slot must report, in a format acceptable to the FAA, the following information for each Common Slot or Limited Slot:

(1) The Slot number, time, and arrival or departure designation;

(2) The operating Carrier;

(3) The date and scheduled time of each of the operations conducted pursuant to the Slot, including the flight number and origin/destination;

(4) The aircraft type identifier.

(b) The FAA may withdraw the Slot of any Carrier that does not meet the reporting requirements of paragraph (a) of this section.

§ 93.73 Administrative provisions.

(a) Each Slot shall be assigned a number for administrative convenience.

(b) The FAA will assign priority numbers by random lottery for Common Slots and Limited Slots at LaGuardia. Each Common Slot and Limited Slot will be assigned a withdrawal priority number, and the 30-minute time period for the Common Slot or Limited Slot, frequency, and the arrival or departure designation.

(c) If the FAA determines that operations need to be reduced for operational reasons, the lowest assigned priority number Common Slots or Limited Slots will be the last withdrawn.

(d) Any Slot available on a temporary basis may be assigned by the FAA to a Carrier on a non-permanent, first-come, first-served basis subject to permanent assignment under this subpart. Any remaining Slot may be made available for Unscheduled Operations on a non-permanent basis and will be assigned under the same procedures applicable to other operating Reservations.

(e) All transactions under this subpart must be in a written or electronic format approved by the FAA.

Issued in Washington, DC, on April 14, 2008.

Nan Shellabarger,

Director of Aviation Policy and Plans.

[FR Doc. E8–8308 Filed 4–16–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

50 CFR Part 660

RIN 0648–AT18

Establishment of Marine Reserves and a Marine Conservation Area Within the Channel Islands National Marine Sanctuary

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS) and National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Response to Comments.

SUMMARY: NOAA published a final rule on May 24, 2007 (72 FR 29208) that established marine reserves and a marine conservation area in the Channel Islands National Marine Sanctuary (Sanctuary). At that time, NOAA decided to defer action on establishing federal marine zones in state waters of the Sanctuary, pending the California Fish and Game Commission closing the gaps between the federal marine zones and the state marine zones. This notice closes the record on NOAA's decision with regard to state waters of the Sanctuary and responds to comments NOAA received on that issue.

FOR FURTHER INFORMATION CONTACT: Sean Hastings, (805) 884–1472; e-mail: *Sean.Hastings@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In August 2006, NOAA published proposed regulations to consider the establishment of marine reserves and marine conservation areas in the Channel Islands National Marine Sanctuary (Sanctuary). At that time, NOAA also released the related draft environmental impact statement (DEIS) for public review and comment. Between August and October of 2006, NOAA received public comment and held two hearings on the proposed rule and DEIS. Over 30,000 individuals submitted written comments and/or presented oral testimony on NOAA's proposal. The majority of these individuals supported the establishment of NOAA's Alternative 1A or Alternative 2. Alternatives 1A and 2 would have established marine zones in both federal and state waters with federal regulations overlaying the entire zone network (i.e., from the outer boundary of the federal waters zones to the mean high water line of the Channel Islands). NOAA's preferred alternative was Alternative 1A.

During the public comment period, the State of California submitted comments on NOAA's proposal. In its October 2006 letter to NOAA, the California Department of Fish and Game (CDFG) stated it could only support Alternative 1C as described in the DEIS. Under Alternative 1C, NOAA would establish marine reserves and a marine conservation area (and their associated regulations) only in the federal waters of the Sanctuary. In subsequent consultations with state representatives and in a letter from the Secretary of Resources dated January 2, 2007, the California Resources Agency also stated that it could only support Alternative 1C at that time. As indicated in the DEIS, Alternative 1C left small gaps in protection between the offshore extent of some of the state waters marine zones established by the State of California in 2003 and the federal waters marine zones proposed by NOAA in Alternative 1C.

On March 16, 2007, the California Coastal Commission (Coastal Commission) held a public meeting on NOAA's consistency determination with California's Coastal Zone Management Plan under section 307 of the Coastal Zone Management Act (see *http://www.coastal.ca.gov/meetings/mtg-mrn7–3.html*). At that meeting, the Coastal Commission passed a motion as follows: ''In the event NOAA elects not to implement Alternative 1A, NOAA will implement Alternative 1C, with the following additional provisions: Until such time as the Resources Agency and the Fish and Game Commission designate the areas in between the existing State-designated MPAs and the 3 mile limit (i.e., the ''gaps'' between the existing state MPAs and the federal MPAs depicted in Alternative 1c [and shown on Exhibit 9]), or the Fish and Game Commission/DFG and NOAA enter into an interagency agreement that establishes MPA protection for these ''gap'' areas, NOAA will expand Alternative 1C to include in its MPA designation these ''gaps'' between the outer boundaries of the existing state MPAs and the state-federal waters boundary (3nm from shore).'' At this meeting, the CDFG representative stated that the California Fish and Game Commission (FGC) could close these gaps in protection using state laws by August 2007.

Based on the record as of May of 2007, NOAA then determined there was sufficient rationale to justify establishing marine zones in the federal waters of the Sanctuary but decided to defer action on establishing federal marine zones in state waters of the Sanctuary, until the State had had an opportunity to close those gaps in protection. As such, NOAA published a final rule on May 24, 2007 (72 FR 29208) that established marine zones in the federal waters and asked for public input on the issue of establishing federal marine zones in the state waters of the Sanctuary. That regulation became effective on July 29, 2007.

On October 12, 2007 the FGC closed the gaps between the federal marine zones and the state marine zones in a manner consistent with the Coastal Commission's resolution and the CDFG representative's statement.[1]

II. Summary of Comments and Responses

Comment 1: The federal government should provide full Sanctuary jurisdiction and oversight for any marine reserves that are located within the CINMS.

Response: On October 12, 2007, the State of California issued regulations that extend the offshore boundaries of the marine zones in state waters to the inshore boundaries of the marine zones in federal waters (established by NOAA in May of 2007). Those regulations went into effect on December 17, 2007, thus providing protection to the area within the marine zones from shore to the inshore boundary of the federal marine zones established by NOAA in May of 2007.

Because there is no regulatory gap in protection between state and federal marine zones, NOAA has decided not to extend sanctuary marine zone regulations into the state waters of the Sanctuary at this time. NOAA and the State will continue to work collaboratively on the administration of the entire marine zone network, including monitoring, education and enforcement.

Comment 2: Alternative 1A, rather than Alternative 1C, best meets the Sanctuary's goals of ensuring the long-term protection of Sanctuary resources, and protecting, restoring and maintaining functional and intact

[1] Closing the gaps would also be consistent with the public record supporting the 2002 decision of the California Fish and Game Commission to establish marine zones in the Sanctuary.

Therefore, NOAA has, at this time, decided not to extend sanctuary regulations into the state waters of the Sanctuary because there is no regulatory gap in protection between state and federal marine zones. NOAA and the State will continue to work collaboratively on the administration of the entire marine zone network, including monitoring, education and enforcement.

portions of habitats, populations and ecological processes in the Sanctuary.

Response: NOAA's analysis identified that the differences among the three sub alternatives (Alternatives 1A, 1B, and 1C) are distinguished by management considerations, not ecological and socioeconomic impacts. As such, because the State of California closed the state water gaps associated with Alternative 1C, the net ecological benefits and socioeconomic impacts between Alternatives 1A (NOAA's original preferred alternative) and 1C (the State of California's recommended alternative) are the same. NOAA has determined, therefore, that Alternative 1C accomplishes the goals of the zoning network.

Comment 3: The FGC process to undertake a regulatory process to fill the gaps adds additional work and cost to an already overburdened agency.

Response: Only the FGC can determine if it has the resources to undertake a regulatory process. NOAA notes that the FGC concluded the regulatory process to fill the gaps on October 12, 2007 and the state regulations went into effect on December 17, 2007.

Comment 4: Overlaid federal regulations applicable network-wide would provide greater enforcement tools for both state and federal resource managers, including the authority to seek injunctive relief in cases where it is determined that there is injury, or imminent risk of injury, to a Sanctuary resource, as well as the assurance that penalties collected as a result of marine zone violations in the CINMS will be used directly to further the protection of CINMS resources. The State would lack these additional enforcement capabilities.

Response: In section 5.1 of the final environmental impact statement, NOAA detailed the administrative benefits of overlaying state waters with federal marine zone regulations, including enhancing enforcement and prosecution, as noted by the commenter. However, at this time, the State opposes NOAA issuance of sanctuary marine zone regulations in state waters of the Sanctuary. NOAA and the State have in the past worked collaboratively on the administration of the network, including enforcement, and will continue to do so in the future. If, for example, in the future the State determines that its enforcement capabilities could be further enhanced with complementary federal regulations in state waters, NOAA would consider a regulatory action to provide for overlaying federal marine zone regulations in state waters.

Comment 5: Alternative 1C creates confusion among Sanctuary users and the public, which could result in unintentional non-compliance with the existing marine zones. This also leaves the resources present in or traversing through the gaps unprotected, thereby fragmenting and decreasing the effectiveness of the existing state and soon-to-be finalized federal MPAs.

Response: The FGC concluded the regulatory process to fill the gaps on October 12, 2007 and the regulations went into effect December 17, 2007. NOAA is unaware of violations or non-compliance due to confusion during the time period from July 2007 to December 2007 when there were gaps between the state and federal marine zones.

Comment 6: Alternative 1A would align with the State's Marine Managed Areas Improvement Act (AB 1600), which directs the State to consolidate and simplify the range of MPAs within California.

Response: The terminology and definitions written into the Code of Federal Regulations were drafted to be as consistent as practicable with the State terms and definitions from the Marine Managed Areas Improvement Act. In addition, the combined state and federal marine zoning network remains consistent with the original geographic scope envisioned by the State and supported by NOAA in the Final Environmental Document adopted by the State in October 2002.

Comment 7: Alternative 1C will result in a fragmented, inefficient and piece-meal approach to the enforcement, monitoring, management, and public education efforts surrounding the Sanctuary MPAs. Implementation of Alternative 1A, on the other hand, would draw on the management and regulatory strengths of both federal and state agencies and thereby ensure that the implementation and protection of the MPA network is carried out in the most efficient, complementary and cohesive fashion.

Response: NOAA and the State strongly support a close, collaborative working relationship to implement the Sanctuary zoning network and to ensure that management of the network (e.g., enforcement, education and outreach, and monitoring) is implemented in a collaborative, efficient, and effective manner.

Comment 8: If the FGC were to alter state regulations governing state MPAs at some point in the future, the integrity of the entire network would be threatened.

Response: NOAA will work closely with the FGC on any future changes to the network. If the State were to alter its regulations in a manner that, in NOAA's judgment, compromises the integrity of the network, NOAA will consider taking further action under the National Marine Sanctuaries Act to maintain the network's integrity.

Comment 9: If the State fails to close gaps by fall 2007, NOAA should expeditiously finalize regulations that will close the gaps by extending federal protections under the National Marine Sanctuaries Act into state waters to meet the boundaries of the state MPAs created in 2003.

Response: The FGC closed the gaps on October 12, 2007. The regulations became effective on December 17, 2007.

Dated: April 9, 2008.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. E8–7916 Filed 4–16–08; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26 and 301

[REG–147775–06]

RIN 1545–BH63

Regulations Under Section 2642(g)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance under section 2642(g)(1). The proposed regulations describe the circumstances and procedures under which an extension of time will be granted under section 2642(g)(1). The proposed guidance affects individuals (or their estates) who failed to make a timely allocation of generation-skipping transfer (GST) exemption to a transfer, and individuals (or their estates) who failed to make a timely election under section 2632(b)(3) or (c)(5). This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by July 16, 2008. Outlines of topics to be discussed at the public hearing scheduled for August 5, 2008, must be received by July 15, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–147775–06), Internal Revenue Service, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through

Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–147775–06), 1111 Constitution Avenue, NW., Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–147775–06). The public hearing will be held in the IRS auditorium.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa M. Melchiorre, (202) 622–3090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, *Attn:* Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by *June 16, 2008*.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The reporting requirement in these proposed regulations is in § 26.2642–7(h)(2) and (3). This information must be reported by transferors or the executors of transferors' estates requesting relief under section 2642(g)(1). This information will be used by the IRS to determine whether to grant a transferor or a transferor's estate an extension of time to: (1) Allocate GST exemption, as defined in section 2631, to a transfer; (2) elect under section 2632(b)(3) (the election not to have the deemed allocation of GST exemption apply to a direct skip); (3) elect under section 2632(c)(5)(A)(i) (the election not to have the deemed allocation of GST exemption apply to an indirect skip or transfers made to a particular trust); and (4) elect under section 2632(c)(5)(A)(ii) (the election to treat any trust as a GST trust for purposes of section 2632(c)).

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on the information that is available to the IRS. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 1,800 hours.

Estimated average annual burden: 2 hours.

Estimated number of respondents: 900.

Estimated annual frequency of response: When relief is requested.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The proposed regulations provide guidance on the application of section 2642(g)(1). Congress added section 2642(g)(1) to the Internal Revenue Code (Code) in section 564 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), (Pub. L. 107–16, § 564, 115 Stat. 91). This section directs the Secretary to issue regulations describing the circumstances and procedures under which an extension of time will be granted to: (1) Allocate GST exemption, as defined in section 2631(a), to a transfer; (2) elect under section 2632(b)(3) (the election not to have the deemed allocation of GST exemption apply to a direct skip); (3) elect under section 2632(c)(5)(A)(i) (the election not to have the deemed allocation of GST exemption apply to an indirect skip or transfers made to a particular trust); and (4) elect under section 2632(c)(5)(A)(ii) (the election to treat any trust as a GST trust for purposes of section 2632(c)). In determining whether to grant relief, section 2642(g)(1) directs that all relevant circumstances be considered including evidence of intent contained in the trust instrument or the instrument of transfer.

The legislative history accompanying section 2642(g)(1) indicates that Congress believed that, in appropriate circumstances, an individual should be granted an extension of time to allocate GST exemption regardless of whether any period of limitations had expired. Those circumstances include situations in which the taxpayer intended to allocate GST exemption and the failure to allocate the exemption was inadvertent. H.R. Conf. Rep. No. 107–84, 202 (2001).

After the enactment of section 2642(g)(1), the IRS issued Notice 2001–50 (2001–2 CB 189), which announced that transferors may seek an extension of time to make an allocation of GST exemption. The Notice provides, generally, that relief will be granted under § 301.9100–3 of the Procedure and Administration Regulations if the taxpayer satisfies the requirements of those regulations and establishes to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and that a grant of the requested relief will not prejudice the interests of the Government. If relief is granted under § 301.9100–3 and the allocation is made, the amount of GST exemption allocated to the transfer is the Federal gift or estate tax value of the property as of the date of the transfer and the allocation is effective as of the date of the transfer. (Notice 2001–50 will be made obsolete upon the publication of the Treasury decision adopting these proposed regulations as final regulations in the **Federal Register**.)

On August 2, 2004, the IRS issued Rev. Proc. 2004–46 (2004–2 CB 142), which provides an alternate simplified method to obtain an extension of time to allocate GST exemption in certain situations. Generally, this method is available only with regard to an inter vivos transfer to a trust from which a GST may be made and only if each of the following requirements is met: (1) The transfer qualified for the gift tax annual exclusion under section 2503(b); (2) the sum of the amount of the transfer and all other gifts by the transferor to the donee in the same year did not exceed the applicable annual exclusion amount for that year; (3) no GST

exemption was allocated to the transfer; (4) the taxpayer has unused GST exemption to allocate to the transfer as of the filing of the request for relief; and (5) no taxable distributions or taxable terminations have occurred as of the filing of the request for relief.

To date, the IRS has issued numerous private letter rulings under § 301.9100–3 granting an extension of time to timely allocate GST exemption in situations in which transferors (or their executors) failed to allocate GST exemption to a trust on a timely filed Federal gift or estate tax return. These proposed regulations are intended to replace § 301.9100–3 with regard to relief under section 2642(g)(1).

Accordingly, § 301.9100–3 will be amended to provide that relief under section 2642(g)(1) cannot be obtained through the provisions of §§ 301.9100–1 and 301.9100–3 after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. Relief under § 301.9100–2(b) (the automatic 6-month extension) will continue to be available to transferors or transferor's estates qualifying for that relief. In addition, the procedures contained in Revenue Procedure 2004–46 will remain effective for transferors within the scope of that Revenue Procedure.

Explanation of Provisions

The proposed regulations identify the standards that the IRS will apply in determining whether to grant a transferor or a transferor's estate an extension of time to: (1) Allocate GST exemption, as defined in section 2631, to a transfer; (2) elect under section 2632(b)(3) (the election not to have the deemed allocation of GST exemption apply to a direct skip); (3) elect under section 2632(c)(5)(A)(i) (the election not to have the deemed allocation of GST exemption apply to an indirect skip or transfers made to a particular trust); and (4) elect under section 2632(c)(5)(A)(ii) (the election to treat any trust as a GST trust for purposes of section 2632(c)). The proposed regulations also identify situations with facts that do not satisfy the standards for granting relief and in which, as a result, an extension of time will not be granted.

If an extension of time to allocate GST exemption is granted under section 2642(g)(1), the allocation of GST exemption will be considered effective as of the date of the transfer, and the value of the property transferred for purposes of chapter 11 or chapter 12 will determine the amount of GST exemption to be allocated. If an extension of time to elect out of the automatic allocation of GST exemption under section 2632(b)(3) or (c)(5)(A)(i) is granted under section 2642(g)(1), the election will be considered effective as of the date of the transfer. If an extension of time to elect to treat any trust as a GST trust under section 2632(c)(5)(A)(ii) is granted under section 2642(g)(1), the election will be considered effective as of the date of the first (or each) transfer covered by that election.

The amount of GST exemption that may be allocated to a transfer pursuant to an extension granted under section 2642(g)(1) is limited to the amount of the transferor's unused GST exemption under section 2631(c) as of the date of the transfer. Thus, if the amount of GST exemption has increased since the date of the transfer, no portion of the increased amount may be applied by reason of the grant of relief under section 2642(g)(1) to a transfer taking place in an earlier year and prior to the effective date of that increase.

Requests for relief under section 2642(g)(1) will be granted when the taxpayer establishes to the satisfaction of the IRS that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

For purposes of section 2642(g)(1), the following nonexclusive list of factors will be used to determine whether a transferor or the executor of a transferor's estate acted reasonably and in good faith: (1) The intent of the transferor or the executor of the transferor's estate to timely allocate GST exemption or to timely make an election under section 2632(b)(3) or (c)(5) as evidenced in the trust instrument, instrument of transfer, or contemporaneous documents, such as Federal gift or estate tax returns or correspondence; (2) the occurrence of intervening events beyond the control of the transferor as defined in section 2652(a), or of the executor of the transferor's estate as defined in section 2203, that caused the failure to allocate GST exemption to a transfer or the failure to elect under section 2632(b)(3) or (c)(5); (3) the lack of awareness by the transferor or the executor of the transferor's estate of the need to allocate GST exemption to a transfer after exercising reasonable diligence, taking into account the experience of the transferor or the executor of the transferor's estate and the complexity of the GST issue; (4) evidence of consistency by the transferor in allocating (or not allocating) the transferor's GST exemption, although evidence of consistency may be less relevant if there is evidence of a change of circumstances or change of trust beneficiaries that would otherwise support a deviation from prior GST tax exemption allocation practices; and (5) reasonable reliance by the transferor or the executor of the transferor's estate on the advice of a qualified tax professional retained or employed by either (or both) of them, and the failure of the transferor or executor, in reliance on or consistent with that advice, to allocate GST exemption to the transfer or to make an election described in section 2632(b)(3) or (c)(5). The IRS will consider all relevant facts and circumstances in making this determination.

For purposes of section 2642(g)(1), the following nonexclusive list of factors will be used to determine whether the interests of the Government would be prejudiced: (1) The grant of requested relief would permit the use of hindsight to produce an economic advantage or other benefit that either would not have been available if the allocation or election had been timely made, or that results from the selection of one out of a number of alternatives (other than whether or not to make an allocation or election) that were available at the time the allocation or election could have been made timely; (2) if the transferor or the executor of the transferor's estate delayed the filing of the request for relief with the intent to deprive the IRS of sufficient time (by reason of the expiration or the impending expiration of the applicable statute of limitations or otherwise) to challenge the claimed identity of the transferor, the value of the transferred property that is the subject of the requested relief, or any other aspect of the transfer that is relevant for transfer tax purposes; and (3) a determination by the IRS that, in the event of a grant of relief under section 2642(g)(1), it would be unreasonably disruptive or difficult to adjust the GST tax consequences of a taxable termination or a taxable distribution that occurred between the time for making a timely allocation of GST exemption or a timely election described in section 2632(b)(3) or (c)(5) and the time at which the request for relief under section 2642(g)(1) was filed. The IRS will consider all relevant facts and circumstances in making this determination.

Relief under section 2642(g)(1) will not be granted when the standard of reasonableness, good faith and lack of prejudice to the interests of the Government is not met. This standard is not met in the following situations: (1) The transferor or the executor of the transferor's estate made an allocation of GST exemption as described in § 26.2632–1(b)(4)(ii)(A)(*1*), or an election under section 2632(b)(3) or

(c)(5), on a timely filed Federal gift or estate tax return, and the relief requested would decrease or revoke that allocation or election; (2) the transferor or the transferor's executor delayed in requesting relief in order to preclude the IRS, as a practical matter, from challenging the identity of the transferor, the value of the transferred interest on the Federal estate or gift tax return, or any other aspect of the transaction that is relevant for Federal estate or gift tax purposes; (3) the action or inaction that is the subject of the request for relief reflected or implemented the decision with regard to the allocation of GST exemption or an election described in section 2632(b)(3) or (c)(5) that was made by the transferor or executor of the transferor's estate who had been accurately informed in all material respects by a qualified tax professional retained or employed by either (or both) of them; or (4) the IRS determines that the transferor's request is an attempt to benefit from hindsight.

A request for relief under section 2642(g)(1) does not reopen, suspend or extend the period of limitations on assessment of any estate, gift, or GST tax under section 6501. Thus, the IRS may request that the transferor or the transferor's executor consent under section 6501(c)(4) to extend the period of limitations on assessment of any or all gift and GST taxes on the transfer(s) for which relief under section 2642(g)(1) has been requested. The transferor or the transferor's executor has the right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time. See section 6501(c)(4)(B).

If the grant of relief under section 2642(g)(1) results in a potential tax refund claim, no refund will be paid or credited to the taxpayer or the taxpayer's estate if, at the time of filing the request for relief, the period of limitations for filing a claim for a credit or refund of Federal gift, estate, or GST tax under section 6511 on the transfer for which relief is granted has expired.

Relief provided under section 2642(g)(1) will be granted through the IRS letter ruling program.

Proposed Effective Date

Section 26.2642–7 applies to requests for relief filed on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Availability of IRS Documents

The IRS notice and revenue procedure cited in this preamble are published in the Cumulative Bulletin and are available at *http://www.irs.gov*.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The applicability of this rule is limited to individuals (or their estates) and trusts, which are not small entities as defined by the RFA (5 U.S.C. 601). Although it is anticipated that there may be a beneficial economic impact for some small entities, including entities that provide tax and legal services that assist individuals in the private letter ruling program, any benefit to those entities would be indirect. Further, this indirect benefit will not affect a substantial number of these small entities because only a limited number of individuals (or their estates) and trusts would submit a private letter ruling request under this rule. Therefore, only a small fraction of tax and legal services entities would generate business or benefit from this rule. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and also on how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 5, 2008 in the IRS auditorium. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written (a signed original and eight (8) copies) or electronic comments by July 16, 2008 and an outline of the topics to be discussed and the time to be devoted to each topic by July 15, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Theresa M. Melchiorre, Office of Chief Counsel, IRS.

List of Subjects

26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 26 and 301 are proposed to be amended as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The authority citation for part 26 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 26.2642–7 also issued under 26 U.S.C. 2642(g) * * *

Par. 2. Section 26.2642–7 is added to read as follows:

§ 26.2642–7 Relief under section 2642(g)(1).

(a) *In general.* Under section 2642(g)(1)(A), the Secretary has the authority to issue regulations describing the circumstances in which a transferor, as defined in section 2652(a), or the executor of a transferor's estate, as defined in section 2203, will be granted an extension of time to allocate generation-skipping transfer (GST) exemption as described in sections 2642(b)(1) and (2). The Secretary also

has the authority to issue regulations describing the circumstances under which a transferor or the executor of a transferor's estate will be granted an extension of time to make the elections described in section 2632(b)(3) and (c)(5). Section 2632(b)(3) provides that an election may be made by or on behalf of a transferor not to have the transferor's GST exemption automatically allocated under section 2632(b)(1) to a direct skip, as defined in section 2612(c), made by the transferor during life. Section 2632(c)(5)(A)(i) provides that an election may be made by or on behalf of a transferor not to have the transferor's GST exemption automatically allocated under section 2632(c)(1) to an indirect skip, as defined in section 2632(c)(3)(A), or to any or all transfers made by such transferor to a particular trust. Section 2632(c)(5)(A)(ii) provides that an election may be made by or on behalf of a transferor to treat any trust as a GST trust, as defined in section 2632(c)(3)(B), for purposes of section 2632(c) with respect to any or all transfers made by that transferor to the trust. This section generally describes the factors that the Internal Revenue Service (IRS) will consider when an extension of time is sought by or on behalf of a transferor to timely allocate GST exemption and/or to make an election under section 2632(b)(3) or (c)(5). Relief provided under this section will be granted through the IRS letter ruling program. See paragraph (h) of this section.

(b) *Effect of Relief*. If an extension of time to allocate GST exemption is granted under this section, the allocation of GST exemption will be considered effective as of the date of the transfer, and the value of the property transferred for purposes of chapter 11 or chapter 12 will determine the amount of GST exemption to be allocated. If an extension of time to elect out of the automatic allocation of GST exemption under section 2632(b)(3) or (c)(5) is granted under this section, the election will be considered effective as of the date of the transfer. If an extension of time to elect to treat any trust as a GST trust under section 2632(c)(5)(A)(ii) is granted under this section, the election will be considered effective as of the date of the first (or each) transfer covered by that election.

(c) *Limitation on relief*. The amount of GST exemption that may be allocated to a transfer as the result of relief granted under this section is limited to the amount of the transferor's unused GST exemption under section 2631(c) as of the date of the transfer. Thus, if, by the time of the making of the allocation or election pursuant to relief granted under this section, the GST exemption amount under section 2631(c) has increased to an amount in excess of the amount in effect for the date of the transfer, no portion of the increased amount may be applied to that earlier transfer by reason of the relief granted under this section.

(d) *Basis for determination*—(1) *In general*. Requests for relief under this section will be granted when the transferor or the executor of the transferor's estate provides evidence (including the affidavits described in paragraph (h) of this section) to establish to the satisfaction of the IRS that the transferor or the executor of the transferor's estate acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government. Paragraphs (d)(2) and (d)(3) of this section set forth nonexclusive lists of factors the IRS will consider in determining whether this standard of reasonableness, good faith, and lack of prejudice to the interests of the Government has been met so that such relief will be granted. In making this determination, IRS will consider these factors, as well as all other relevant facts and circumstances. Paragraph (e) of this section sets forth situations in which this standard has not been met and, as a result, in which relief under this section will not be granted.

(2) *Reasonableness and good faith*. The following is a nonexclusive list of factors that will be considered to determine whether the transferor or the executor of the transferor's estate acted reasonably and in good faith for purposes of this section:

(i) The intent of the transferor to timely allocate GST exemption to a transfer or to timely make an election under section 2632(b)(3) or (c)(5), as evidenced in the trust instrument, the instrument of transfer, or other relevant documents contemporaneous with the transfer, such as Federal gift and estate tax returns and correspondence. This may include evidence of the intended GST tax status of the transfer or the trust (for example, exempt, non-exempt, or partially exempt), or more explicit evidence of intent with regard to the allocation of GST exemption or the election under section 2632(b)(3) or (c)(5).

(ii) Intervening events beyond the control of the transferor or of the executor of the transferor's estate as the cause of the failure to allocate GST exemption to a transfer or the failure to make an election under section 2632(b)(3) or (c)(5).

(iii) Lack of awareness by the transferor or the executor of the transferor's estate of the need to allocate GST exemption to the transfer, despite the exercise of reasonable diligence, taking into account the experience of the transferor or the executor of the transferor's estate and the complexity of the GST issue, as the cause of the failure to allocate GST exemption to a transfer or to make an election under section 2632(b)(3) or (c)(5).

(iv) Consistency by the transferor with regard to the allocation of the transferor's GST exemption (for example, the transferor's consistent allocation of GST exemption to transfers to skip persons or to a particular trust, or the transferor's consistent election not to have the automatic allocation of GST exemption apply to transfers to one or more trusts or skip persons pursuant to section 2632(b)(3) or (c)(5)). Evidence of consistency may be less relevant if there has been a change of circumstances or change of trust beneficiaries that would otherwise explain a deviation from prior GST exemption allocation decisions.

(v) Reasonable reliance by the transferor or the executor of the transferor's estate on the advice of a qualified tax professional retained or employed by one or both of them and, in reliance on or consistent with that advice, the failure of the transferor or the executor to allocate GST exemption to the transfer or to make an election described in section 2632(b)(3) or (c)(5). Reliance on a qualified tax professional will not be considered to have been reasonable if the transferor or the executor of the transferor's estate knew or should have known that the professional either—

(A) Was not competent to render advice on the GST exemption; or

(B) Was not aware of all relevant facts.

(3) *Prejudice to the interests of the Government*. The following is a nonexclusive list of factors that will be considered to determine whether the interests of the Government would be prejudiced for purposes of this section:

(i) The interests of the Government would be prejudiced to the extent to which the request for relief is an effort to benefit from hindsight. The interests of the Government would be prejudiced if the IRS determines that the requested relief is an attempt to benefit from hindsight rather than to achieve the result the transferor or the executor of the transferor's estate intended at the time when the transfer was made. A factor relevant to this determination is whether the grant of the requested relief would permit an economic advantage or other benefit that would not have been available if the allocation or election had been timely made. Similarly, there would be prejudice if a grant of the

requested relief would permit an economic advantage or other benefit that results from the selection of one out of a number of alternatives (other than whether or not to make an allocation or election) that were available at the time the allocation or election could have been timely made, if hindsight makes the selected alternative more beneficial than the other alternatives. Finally, in a situation where the only choices were whether or not to make a timely allocation or election, prejudice would exist if the transferor failed to make the allocation or election in order to wait to see (thus, with the benefit of hindsight) whether or not the making of the allocation of exemption or election would be more beneficial.

(ii) The timing of the request for relief will be considered in determining whether the interests of the Government would be prejudiced by granting relief under this section. The interests of the Government would be prejudiced if the transferor or the executor of the transferor's estate delayed the filing of the request for relief with the intent to deprive the IRS of sufficient time to challenge the claimed identity of the transferor of the transferred property that is the subject of the request for relief, the value of that transferred property for Federal gift or estate tax purposes, or any other aspect of the transfer that is relevant for Federal gift or estate tax purposes. The fact that any period of limitations on the assessment or collection of transfer taxes has expired prior to the filing of a request for relief under this section, however, will not by itself prohibit a grant of relief under this section. Similarly, the combination of the expiration of any such period of limitations with the fact that the asset or interest was valued for transfer tax purposes with the use of a valuation discount will not by itself prohibit a grant of relief under this section.

(iii) The occurrence and effect of an intervening taxable termination or taxable distribution will be considered in determining whether the interests of the Government would be prejudiced by granting relief under this section. The interests of the Government may be prejudiced if a taxable termination or taxable distribution occurred between the time for making a timely allocation of GST exemption or a timely election described in section 2632(b)(3) or (c)(5) and the time at which the request for relief under this section was filed. The impact of a grant of relief on (and the difficulty of adjusting) the GST tax consequences of that intervening termination or distribution will be considered in determining whether the occurrence of a taxable termination or taxable distribution constitutes prejudice.

(e) *Situations in which the standard of reasonableness, good faith, and lack of prejudice to the interests of the Government has not been met.* Relief under this section will not be granted if the IRS determines that the transferor or the executor of the transferor's estate has not acted reasonably and in good faith, and/or that the grant of relief would prejudice the interests of the Government. The following situations provide illustrations of some circumstances under which the standard of reasonableness, good faith, and lack of prejudice to the interests of the Government has not been met, and as a result, in which relief under this section will not be granted:

(1) *Timely allocations and elections.* Relief will not be granted under this section to decrease or revoke a timely allocation of GST exemption as described in § 26.2632–1(b)(4)(ii)(A)(*1*), or to revoke an election under section 2632(b)(3) or (c)(5) made on a timely filed Federal gift or estate tax return.

(2) *Timing.* Relief will not be granted if the transferor or executor delayed the filing of the request for relief with the intent to deprive the IRS of sufficient time to challenge the claimed identity of the transferor or the valuation of the transferred property for Federal gift or estate tax purposes. (However, see paragraph (d)(3)(ii) of this section for examples of facts which alone do not constitute prejudice.)

(3) *Failure after being accurately informed.* Relief will not be granted under this section if the decision made by the transferor or the executor of the transferor's estate (who had been accurately informed in all material respects by a qualified tax professional retained or employed by either (or both) of them with regard to the allocation of GST exemption or an election described in section 2632(b)(3) or (c)(5)) was reflected or implemented by the action or inaction that is the subject of the request for relief.

(4) *Hindsight.* Relief under this section will not be granted if the IRS determines that the requested relief is an attempt to benefit from hindsight rather than an attempt to achieve the result the transferor or the executor of the transferor's estate intended when the transfer was made. One factor that will be relevant to this determination is whether the grant of relief will give the transferor the benefit of hindsight by providing an economic advantage that may not have been available if the allocation or election had been timely made. Thus, relief will not be granted if that relief will shift GST exemption from one trust to another trust unless the beneficiaries of the two trusts, and their respective interests in those trusts, are the same. Similarly, relief will not be granted if there is evidence that the transferor or executor had not made a timely allocation of the exemption in order to determine which of the various trusts achieved the greatest asset appreciation before selecting the trust that should have a zero inclusion ratio.

(f) *Period of limitations under section 6501.* A request for relief under this section does not reopen, suspend, or extend the period of limitations on assessment or collection of any estate, gift, or GST tax under section 6501. Thus, the IRS may request that the transferor or the transferor's executor consent, under section 6501(c)(4), to an extension of the period of limitation on assessment or collection of any or all gift and GST taxes for the transfer(s) that are the subject of the requested relief. The transferor or the transferor's executor has the right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time. See section 6501(c)(4)(B).

(g) *Refunds.* The filing of a request for relief under section 2642(g)(1) with the IRS does not constitute a claim for refund or credit of an overpayment and no implied right to refund will arise from the filing of such a request for relief. Similarly, the filing of such a request for relief does not extend the period of limitations under section 6511 for filing a claim for refund or credit of an overpayment. In the event the grant of relief under section 2642(g)(1) results in a potential claim for refund or credit of an overpayment, no such refund or credit will be allowed to the taxpayer or to the taxpayer's estate if the period of limitations under section 6511 for filing a claim for a refund or credit of the Federal gift, estate, or GST tax that was reduced by the granted relief has expired. The period of limitations under section 6511 is generally the later of three years from the time the original return is filed or two years from the time the tax was paid. If the IRS and the taxpayer agree to extend the period for assessment of tax, the period for filing a claim for refund or credit will be extended. Section 6511(c). The taxpayer or the taxpayer's estate is responsible for preserving any potential claim for refund or credit. A taxpayer who seeks and is granted relief under section 2642(g)(1) will not be regarded as having filed a claim for refund or credit by requesting such relief. In order to preserve a right of refund or credit, the taxpayer or the executor of the

taxpayer's estate also must file before the expiration of the period of limitations under section 6511 for filing such a claim any required forms for requesting a refund or credit in accordance with the instructions to such forms and applicable regulations.

(h) *Procedural requirements*—(1) *Letter ruling program.* The relief described in this section is provided through the IRS's private letter ruling program. See Revenue Procedure 2008–1 (2008–1 IRB 1), or its successor, (which are available at *http://www.irs.gov*). Requests for relief under this section that do not meet the requirements of § 301.9100–2 of this chapter must be made under the rules of this section.

(2) *Affidavit and declaration of transferor or the executor of the transferor's estate*—(i) The transferor or the executor of the transferor's estate must submit a detailed affidavit describing the events that led to the failure to timely allocate GST exemption to a transfer or the failure to timely elect under section 2632(b)(3) or (c)(5), and the events that led to the discovery of the failure. If the transferor or the executor of the transferor's estate relied on a tax professional for advice with respect to the allocation or election, the affidavit must describe—

(A) The scope of the engagement;

(B) The responsibilities the transferor or the executor of the transferor's estate believed the professional had assumed, if any; and

(C) The extent to which the transferor or the executor of the transferor's estate relied on the professional.

(ii) Attached to each affidavit must be copies of any writing (including, without limitation, notes and e-mails) and other contemporaneous documents within the possession of the affiant relevant to the transferor's intent with regard to the application of GST tax to the transaction for which relief under this section is being requested.

(iii) The affidavit must be accompanied by a dated declaration, signed by the transferor or the executor of the transferor's estate that states: ''Under penalties of perjury, I declare that I have examined this affidavit, including any attachments thereto, and to the best of my knowledge and belief, this affidavit, including any attachments thereto, is true, correct, and complete. In addition, under penalties of perjury, I declare that I have examined all the documents included as part of this request for relief, and, to the best of my knowledge and belief, these documents collectively contain all the relevant facts relating to the request for relief, and such facts are true, correct, and complete.''

(3) *Affidavits and declarations from other parties*—(i) The transferor or the executor of the transferor's estate must submit detailed affidavits from individuals who have knowledge or information about the events that led to the failure to allocate GST exemption or to elect under section 2632(b)(3) or (c)(5), and/or to the discovery of the failure. These individuals may include individuals whose knowledge or information is not within the personal knowledge of the transferor or the executor of the transferor's estate. The individuals described in paragraph (h)(3)(i) of this section must include—

(A) Each agent or legal representative of the transferor who participated in the transaction and/or the preparation of the return for which relief is being requested;

(B) The preparer of the relevant Federal estate and/or gift tax return(s);

(C) Each individual (including an employee of the transferor or the executor of the transferor's estate) who made a substantial contribution to the preparation of the relevant Federal estate and/or gift tax return(s); and

(D) Each tax professional who advised or was consulted by the transferor or the executor of the transferor's estate with regard to any aspect of the transfer, the trust, the allocation of GST exemption, and/or the election under section 2632(b)(3) or (c)(5).

(ii) Each affidavit must describe the scope of the engagement and the responsibilities of the individual as well as the advice or service(s) the individual provided to the transferor or the executor of the transferor's estate.

(iii) Attached to each affidavit must be copies of any writing (including, without limitation, notes and e-mails) and other contemporaneous documents within the possession of the affiant relevant to the transferor's intent with regard to the application of GST tax to the transaction for which relief under this section is being requested.

(iv) Each affidavit also must include the name, and current address of the individual, and be accompanied by a dated declaration, signed by the individual that states: ''Under penalties of perjury, I declare that I have personal knowledge of the information set forth in this affidavit, including any attachments thereto. In addition, under penalties of perjury, I declare that I have examined this affidavit, including any attachments thereto, and, to the best of my knowledge and belief, the affidavit contains all the relevant facts of which I am aware relating to the request for relief filed by or on behalf of [transferor or the executor of the transferor's estate], and such facts are true, correct, and complete.''

(v) If an individual who would be required to provide an affidavit under paragraph (h)(3)(i) of this section has died or is not competent, the affidavit required under paragraph (h)(2) of this section must include a statement to that effect, as well as a statement describing the relationship between that individual and the transferor or the executor of the transferor's estate and the information or knowledge the transferor or the executor of the transferor's estate believes that individual had about the transfer, the trust, the allocation of exemption, or the election. If an individual who would be required to provide an affidavit under paragraph (h)(3)(i) of this section refuses to provide the transferor or the executor of the transferor's estate with such an affidavit, the affidavit required under paragraph (h)(2) of this section must include a statement that the individual has refused to provide the affidavit, a description of the efforts made to obtain the affidavit from the individual, the information or knowledge the transferor or the executor of the transferor's estate believes the individual had about the transfer, and the relationship between the individual and the transferor or the executor of the transferor's estate.

(i) *Effective/applicability date.* Section 26.2642–7 applies to requests for relief filed on or after the date of publication of the Treasury decision adopting these proposed rules as final regulations in the **Federal Register**.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 301.9100–3 is amended by adding a new paragraph (g) to read as follows:

§ 301.9100–3 Other extensions.

* * * * *

(g) *Relief under section 2642(g)(1)*—(1) *Procedures.* The procedures set forth in this section are not applicable for requests for relief under section 2642(g)(1). For requests for relief under section 2642(g)(1), see § 26.2642–7.

(2) *Effective/applicability date.* Paragraph (g) of this section applies to requests for relief under section 2642(g)(1) filed on or after the date of publication of the Treasury decision

adopting these rules as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–8033 Filed 4–16–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–141998–06]

RIN 1545–BG13

Withdrawal of Regulations Under Old Section 6323(b)(10)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations related to the validity and priority of the Federal tax lien against certain persons under section 6323 of the Internal Revenue Code (the Code). The proposed regulations update the corresponding Treasury Regulations in various respects. The proposed regulations reflect the adjustment within section 6323(b) of certain dollar amounts as well as the amendment of section 6323(b)(10) by the IRS Restructuring and Reform Act of 1998 (RRA 1998). In addition, the proposed regulations amend the existing regulations under section 6323(c), (g), and (h) to reflect that a notice of Federal tax lien (NFTL) is not treated as meeting the filing requirements until it is both filed and indexed in the office designated by the state (in the case of real property located in a state where a deed is not valid against a purchaser until the filing of such deed has been entered and recorded in the public index); the lien will be extinguished if an NFTL contains a certificate of release and the NFTL is not timely refiled; and current law provides the IRS with a 10-year period to collect an assessed tax. The proposed regulations also make changes to the existing regulations under section 6323(f) to clarify the IRS's authority to file NFTLs electronically. Finally, the proposed regulations make incidental changes throughout the existing regulations under section 6323 to make the dates in the examples more contemporaneous with the present and to remove language deemed no longer necessary.

DATES: Written or electronic comments and requests for a public hearing must be received by *June 16, 2008*.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–141998–06), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–141998–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–141998–06).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Debra A. Kohn at (202) 622–7985; concerning submissions of comments and the hearing, Regina Johnson at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6323 of the Code. If any person liable for tax neglects or refuses to pay after demand, the amount of that tax is a lien in favor of the United States against all property and rights to property of such person under section 6321. Section 6323 provides that a Federal tax lien is only valid against certain persons if an NFTL is filed and addresses generally the validity and priority of the Federal tax lien against such persons. Section 6323(b) and (c) addresses the protection of certain interests even though an NFTL has been filed. Section 6323(f) prescribes the place for filing and the form of an NFTL. Section 6323(g) addresses the refiling of an NFTL. Section 6323(h) contains definitions of certain terms used throughout section 6323.

Since 1976, there have been numerous amendments to section 6323 that are not reflected in the existing regulations. Section 6323(b)(10) has been amended by RRA 1998. In addition, several subsections of section 6323(b) have been amended to increase the dollar amounts these sections reference. Also, section 6323(f)(4) was amended by the Revenue Act of 1978 to provide that an NFTL does not meet the filing requirements with respect to real property until the filing is entered and recorded in a public index maintained by the state if the laws of the state provide that a deed is not valid against a purchaser unless it is recorded in a public index. Moreover, section 6502, the statute that governs the period the IRS has to take collection action (referenced in various places throughout § 301.6323(g)–1(c)), was amended by the Revenue Act of 1990 to change the period from six years to 10 years.

There have also been several changes to IRS practice that are not reflected in the existing regulations. Section 301.6323(f)–1(d)(2) of the existing regulations provides that an NFTL may be filed electronically if the state in which it is being filed permits electronic filing. Whether a state ''permits'' electronic filing of NFTLs has been subject to varying interpretations, thus casting doubt on the validity of NFTLs filed electronically in jurisdictions that do not specifically provide for electronic filing. However, the requirements for proper filing of liens are a matter of Federal, not state, law. *United States* v. *Union Cent. Life Ins. Co.*, 368 U.S. 291, 82 S. Ct. 349, 7 L. Ed. 2d 294 (1961). Thus, the IRS already possesses the authority to dictate the form and content of its NFTLs. The proposed regulations remove the ''permits'' language so that they correctly reflect the IRS's authority to file NFTLs electronically.

Section 301.6323(g)–1(a)(3) and (4) of the existing regulations states that the IRS may refile an NFTL once the filing period has elapsed and that failure to refile within the specified period does not affect the existence of the lien. The existing regulations also provide that failure to refile during the specified period does not affect the NFTL with respect to property that is the subject matter of a suit or that was levied upon prior to the expiration of the required refiling period. These provisions concerning the effect of a failure to refile are, to some extent, inconsistent with current IRS practice. Most filed NFTLs now contain a certificate of release that automatically releases the lien as of the date the NFTL prescribes, which is the date at the end of the required refiling period. Therefore, if the IRS does not refile an NFTL within the specified period, the certificate of release contained in the NFTL extinguishes the lien. The proposed regulations update the regulations under section 6323 to reflect these changes in IRS practice.

The Code currently provides a 10-year period for instituting a proceeding in court or serving a levy to collect an assessed tax liability, while § 301.6323(g)–1(c) of the existing regulations references the 6-year period that existed until 1990. The proposed regulations update § 301.6323(g)–1(c) to reflect this change in the law.

The proposed regulations also update the regulations under section 6323(h) to reflect changes made by the Uniform

Commercial Code (UCC). Section 9–312(a) of the UCC, as adopted by most states in 2001, now provides that a security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

The proposed regulations also make various incidental changes throughout the § 301.6323 regulations.

Explanation of Provisions

I. Adjustment of Dollar Amounts

Under section 6323(b) of the Code, a Federal tax lien is not valid against certain interests even though an NFTL has been filed.

Section 6323(b)(4) includes, as one such interest, certain tangible personal property purchased in a casual sale. In 1976, the purchase price of such property was required to be less than $250. The limit of $250 is reflected in § 301.6323(b)–1(d)(1) and in examples 1 and 3 contained in § 301.6323(b)–1(d)(3). This limit has been raised in the most recent amendment to section 6323(b)(4) to $1,000. The statutory limit is indexed annually for inflation. After indexing, the amount for 2008 is $1,320.

Section 6323(b)(7) protects a mechanic's lienor with respect to residential property subject to the mechanic's lien. In 1976, the protection extended to such property was limited to an amount not more than $1,000. The limit of $1,000 is reflected in § 301.6323(b)–1(g)(1) and in the examples contained in § 301.6323(b)–1(g)(2). This amount was raised to $5,000 in the most recent amendment to section 6323(b)(7). The statutory limit is indexed annually for inflation. After indexing, the amount for 2008 is $6,600. The proposed regulations update § 301.6323(b)–1(d) and (g) to make the dollar limits consistent with those applicable under the current version of section 6323(b)(4) and (7).

Section 301.6323(b)–1(d)(3), *Example 3*, references a $500 limit on household goods exempt from levy, citing Treas. Reg. § 301.6334–1(a)(2). Section 301.6334–1(a)(2) is the regulation under I.R.C. § 6334(a)(2). The amount reflected in section 6334(a)(2) as set forth in the most recent version of the Code is $6,250. The amounts in both section 6334(a)(2) and the corresponding regulation are indexed annually for inflation. After indexing, the applicable amount for 2008 is $7,900. Accordingly, § 301.6323(b)–1(d)(3), *Example 3*, is amended to make the reference to the limit on household goods exempt from levy consistent with the amounts applicable in section 6334(a)(2) and § 301.6334–1(a)(2).

II. Removal of Protection for Passbook Loans

Section 6323(b)(10) currently protects from a Federal tax lien certain institutions holding deposit-secured loans, to the extent of any loan made without actual notice or knowledge of the Federal tax lien. Prior to the enactment of RRA 1998, section 6323(b)(10) was entitled ''passbook loans'' and protected from a Federal tax lien an institution granting a loan without actual notice or knowledge of the Federal tax lien, if the loan was secured by an account evidenced by a passbook and if the lending institution was continuously in possession of the passbook from the time the loan was made. Section 301.6323(b)–1(j) reflects this language and, in addition, includes both a definition of ''passbook'' and an example of the provision's operation.

The amendment of section 6323(b)(10) renders the language in the regulations pertaining to passbook accounts obsolete. Because leaving § 301.6323(b)–1(j) in place is misleading and unnecessary in light of the amendment of section 6323(b)(10), the proposed regulations remove § 301.6323(b)–1(j).

III. Clarification of Language Authorizing IRS To File NFTLs Electronically

Section 301.6323(f)–1(d)(2) sets forth a definition of a Form 668, the form that, when filed, serves as an NFTL. This section includes NFTLs filed by electronic or magnetic media ''if a state in which [an NFTL] is filed permits a notice of Federal tax lien to be filed by the use of an electronic or magnetic medium.''

Most local recording offices now have the technological capability to accept electronically-filed NFTLs. The proposed regulations amend § 301.6323(f)–1(d)(2) to provide that a Form 668 may be filed either in paper form or electronically. In addition, the proposed regulations specifically define transmission by fax and e-mail as electronic, as opposed to paper, filings. The regulations as amended reflect the IRS's authority to file NFTLs electronically in all situations and allow the IRS to work with local jurisdictions to receive electronically-filed NFTLs if they have the capacity to do so without obtaining permission from the state.

IV. Revision of Language on Late Refiling of NFTLs

Section 301.6323(g)–1(a) sets forth general principles pertaining to refiling NFTLs. Section 301.6323(g)–1(a)(1) provides in part that if two or more NFTLs are filed with respect to a particular tax assessment, the failure to refile during the specified period in respect to one of the notices does not affect the effectiveness of the refiling of any other NFTL. Section 301.6323(g)–1(a)(3) states in part that the failure to refile an NFTL during the required filing period does not affect the effectiveness of the notice with respect to property that is the subject matter of a suit or that has been levied upon prior to the expiration of the filing period. Section 301.6323(g)–1(a)(4), as well as several of the examples in § 301.6323(g)–1(b)(3) and (c)(3), suggest that a lien may continue to exist when an NFTL is not refiled. These provisions are, to some extent, inconsistent with current IRS practice. Most NFTLs now contain a certificate of release that automatically becomes effective on the date prescribed in the NFTL, which is the date the required refiling period ends. Therefore, if an NFTL that contains a certificate of release is not timely refiled in each jurisdiction where it was originally filed, the lien self-releases and is extinguished in all jurisdictions. See I.R.C. § 6325(f)(1)(A). The extinguishment of the lien invalidates NFTLs filed in other jurisdictions and requires the IRS to file certificates of revocation, as well as new NFTLs, in each jurisdiction where NFTLs were previously filed.

The proposed regulations amend these provisions to provide that, with respect to an NFTL that includes a certificate of release, failure to timely refile the NFTL in any jurisdiction where it was originally filed extinguishes the lien, and that when an NFTL is filed in more than one jurisdiction, certificates of revocation as well as new NFTLs must be filed in all the jurisdictions for the lien to be reinstated.

V. Revision of References to 6-Year Collection Period

Section 6502 generally affords a 10-year period for instituting a proceeding in court or serving a levy to collect a properly assessed tax. The period section 6502 allowed for taking these collection actions was, until 1990, six years. The existing regulations under section 6323(g) do not reflect this change. Instead, subsections (b) and (c) of § 301.6323(g)–1, which addresses refiling of NFTLs, imply that the applicable period for collection is six years. *Example 5* of § 301.6323(g)–1(b)(3) references the 6-year period. In addition, several references to a 6-year collection period occur in § 301.6323(g)–1(c)(1), and additional references to the 6-year period occur in

Example 1 in § 301.6323(g)–1(c)(3). The proposed regulations update § 301.6323(g)–1(c) to reflect this change in the law.

VI. Incidental Updates

Various references and dates contained in the regulations under section 6323 have been rendered obsolete since 1976. The proposed regulations update various provisions throughout the § 301.6323 regulations to make dates more contemporaneous with the present and remove language deemed no longer necessary. In addition, the proposed regulations remove all references to Internal Revenue Service district directors, as these positions were eliminated by the Internal Revenue Service reorganization implemented pursuant to RRA 1998.

Proposed Effective Date

These regulations are proposed to generally apply with respect to any NFTL filed on or after the date that these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Debra A. Kohn of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6323(b)–1 is amended as follows:

1. Paragraph (d)(1) is revised.

2. Paragraphs (d)(3) *Example 1* and *Example* 3 are revised.

3. Paragraphs (g)(1), and (g)(2) *Example 1* through *Example 3* are revised.

4. Paragraphs (i)(1)(iii) and (j) are revised.

The revisions read as follows:

§ 301.6323(b)–1 Protection for certain interests even though notice filed.

* * * * *

(d) *Personal property purchased in casual sale*—(1) *In general.* Even though a notice of lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a purchaser (as defined in § 301.6323(h)–1(f)) of household goods, personal effects, or other tangible personal property of a type described in § 301.6334–1 (which includes wearing apparel, school books, fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than $1,320, effective for 2008 and adjusted each year based on the rate of inflation (excluding interest and expenses described in § 301.6323(e)–1).

* * * * *

(3) * * *

Example 1. A, an attorney's widow, sells a set of law books for $200 to B, for B's own use. Prior to the sale a notice of lien was filed with respect to A's delinquent tax liability in accordance with § 301.6323(f)–1. B has no actual notice or knowledge of the tax lien. In addition, B does not know that the sale is one of a series of sales. Because the sale is a casual sale for less than $1,320 and involves books of a profession (tangible personal property of a type described in § 301.6334–1, irrespective of the fact that A has never engaged in the legal profession), the tax lien is not valid against B even though a notice of lien was filed prior to the time of B's purchase.

* * * * *

Example 3. In an advertisement appearing in a local newspaper, G indicates that he is offering for sale a lawn mower, a used television set, a desk, a refrigerator, and certain used dining room furniture. In response to the advertisement, H purchases the dining room furniture for $200. H does not receive any information which would impart notice of a lien, or that the sale is one of a series of sales, beyond the information contained in the advertisement. Prior to the sale a notice of lien was filed with respect to G's delinquent tax liability in accordance with § 301.6323(f)–1. Because H had no actual notice or knowledge that substantially all of G's household goods were being sold or that the sale is one of a series of sales, and because the sale is a casual sale for less than $1,320, H does not purchase the dining room furniture subject to the lien. The household goods are of a type described in § 301.6334–1(a)(2) irrespective of whether G is the head of a family or whether all such household goods offered for sale exceed $7,900 in value.

* * * * *

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a mechanic's lienor (as defined in § 301.6323(h)–1(b)) who holds a lien for the repair or improvement of a personal residence if—

(i) The residence is occupied by the owner and contains no more than four dwelling units; and

(ii) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in § 301.6323(e)–1) is not more than $6,600, effective for 2008 and adjusted each year based on the rate of inflation.

(iii) For purposes of paragraph (g)(1)(ii) of this section, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the $6,600 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes his work or that he knew of the lien before undertaking his work.

(2) * * *

Example 1. A owns a building containing four apartments, one of which he occupies as his personal residence. A notice of lien which affects the building is filed in accordance with § 301.6323(f)–1. Thereafter, A enters into a contract with B in the amount of $800, which includes labor and materials, to repair the roof of the building. B purchases roofing shingles from C for $300. B completes the work and A fails to pay B the agreed amount. In turn, B fails to pay C for the shingles. Under local law, B and C acquire mechanic's liens on A's building. Because the contract price on the prime contract with A is not more than $6,600 and under local law B and C acquire mechanic's liens on A's building, the liens of B and C have priority over the Federal tax lien.

Example 2. Assume the same facts as in *Example 1,* except that the amount of the prime contract between A and B is $7,100. Because the amount of the prime contract with the owner, A, is in excess of $6,600, the tax lien has priority over the entire amount of each of the mechanic's liens of B and C, even though the amount of the contract between B and C is $300.

Example 3. Assume the same facts as in *Example 1,* except that A and B do not agree in advance upon the amount due under the prime contract but agree that B will perform the work for the cost of materials and labor plus 10 percent of such cost. When the work is completed, it is determined that the total amount due is $850. Because the prime contract price is not more than $6,600 and under local law B and C acquire mechanic's liens on A's residence, the liens of B and C have priority over the Federal tax lien.

* * * * *

(i) * * * (1) * * *

(iii) After the satisfaction of a levy pursuant to section 6332(b), unless and until the Internal Revenue Service delivers to the insuring organization a notice (for example, another notice of levy, a letter, etc.) executed after the date of such satisfaction, that the lien exists.

* * * * *

(j) *Effective/applicability date.* This section applies to any notice of Federal tax lien filed on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 3. Section 301.6323(c)–2 is amended as follows:

1. Paragraph (d), *Example 1* through *Example 5,* is revised.

2. Paragraph (e) is added.

The revisions and addition read as follows:

§ 301.6323(c)–2 Protection for real property construction or improvement financing agreements.

* * * * *

(d) * * *

Example 1. A, in order to finance the construction of a dwelling on a lot owned by him, mortgages the property to B. The mortgage, executed January 4, 2006, includes an agreement that B will make cash disbursements to A as the construction progresses. On February 1, 2006, in accordance with § 301.6323(f)–1, a notice of lien is filed and recorded in the public index with respect to A's delinquent tax liability. A continues the construction, and B makes cash disbursements on June 15, 2006, and December 15, 2006. Under local law B's security interest arising by virtue of the disbursements is protected against a judgment lien arising February 1, 2006 (the date of tax lien filing) out of an unsecured obligation. Because B is the holder of a security interest coming into existence by reason of cash disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance the construction of real property, and because B's security interest is protected, under local law, against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, B's security interest has priority over the tax lien.

Example 2. (i) C is awarded a contract for the demolition of several buildings. On March 3, 2004, C enters into a written agreement with D which provides that D will make cash disbursements to finance the demolition and also provides that repayment of the disbursements is secured by any sums due C under the contract. On April 1, 2004, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to C's delinquent tax liability. With actual notice of the tax lien, D makes cash disbursements to C on August 13, September 13, and October 13, 2004. Under local law D's security interest in the proceeds of the contract with respect to the disbursements is entitled to priority over a judgment lien arising on April 1, 2004 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because D's security interest arose by reason of disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance a contract to demolish real property, and because D's security interest is valid under local law against a judgment lien arising as of the time of tax lien filed out of an unsecured obligation, the tax lien is not valid with respect to D's security interest in the proceeds of the demolition contract.

Example 3. Assume the same facts as in *Example 2* and, in addition, assume that, as further security for the cash disbursements, the March 3, 2004, agreement also provides for a security interest in all of C's demolition equipment. Because the protection of the security interest arising from the disbursements made after tax lien filing under the agreement is limited under section 6323(c)(3) to the proceeds of the demolition contract and because, under the circumstances, the security interest in the equipment is not otherwise protected under section 6323, the tax lien will have priority over D's security interest in the equipment.

Example 4. (i) On January 3, 2006, F and G enter into a written agreement, whereby F agrees to provide G with cash disbursements, seed, fertilizer, and insecticides as needed by G, in order to finance the raising and harvesting of a crop on a farm owned by G. Under the terms of the agreement F is to have a security interest in the crop, the farm, and all other property then owned or thereafter acquired by G. In accordance with § 301.6323(f)–1, on January 10, 2006, a notice of lien is filed and recorded in the public index with respect to G's delinquent tax liability. On March 3, 2006, with actual notice of the tax lien, F makes a cash disbursement of $5,000 to G and furnishes him seed, fertilizer, and insecticides having a value of $10,000. Under local law F's security interest, coming into existence by reason of the cash disbursement and the furnishing of goods, has priority over a judgment lien arising January 10, 2006 (the date of tax lien filing and recording in the public index) out of an unsecured obligation.

(ii) Because F's security interest arose by reason of a disbursement (including the furnishing of goods) made under a written agreement which was entered into before tax lien filing and which constitutes an agreement to finance the raising or harvesting of a farm crop, and because F's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to F's security interest in the crop even though a notice of lien was filed before the security interest arose. Furthermore, because the farm is property subject to the tax lien at the time of tax lien filing, F's security interest with respect to the farm also has priority over the tax lien.

Example 5. Assume the same facts as in *Example 4* and in addition that on October 2, 2006, G acquires several tractors to which F's security interest attaches under the terms of the agreement. Because the tractors are not property subject to the tax lien at the time of tax lien filing, the tax lien has priority over F's security interest in the tractors.

(e) *Effective/applicability date.* This section applies with respect to any notice of Federal tax lien filed on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 4. Section 301.6323(f)–1 is amended as follows:

1. Paragraph (d)(2) is revised.

2. Paragraph (f) is added.

The revision and addition read as follows:

§ 301.6323(f)–1 Place for filing notice; form.

* * * * *

(d) * * *

(2) *Form 668 defined.* The term *Form 668* means either a paper form or a form transmitted electronically, including a form transmitted by facsimile (fax) or electronic mail (e-mail). A Form 668 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

* * * * *

(f) *Effective/applicability date.* This section applies with respect to any notice of Federal tax lien filed on or

after the date these regulations are published as final regulations in the **Federal Register**.

Par 5. Section 301.6323(g)–1 is amended as follows:

1. Paragraphs (a)(1), (a)(4), (b)(3) *Example 1*, (b)(3) *Example 5*, and (c)(1) are revised.

2. Paragraphs (a)(3), (a)(3)(i), and (a)(3)(ii) are redesignated as paragraphs (a)(3)(i), (a)(3)(i)(A), and (a)(3)(i)(B), respectively.

3. The undesignated text following newly-designated paragraph (a)(3)(i)(B) is designated as paragraph (a)(3)(ii).

4. Newly-designated paragraph (a)(3)(i) introductory text is revised.

5. Newly-designated paragraph (a)(3)(i)(A) is revised.

6. Newly-designated paragraph (a)(3)(ii) is revised.

7. Paragraph (c)(2) is removed.

8. Paragraph (c)(3) is redesignated as paragraph (c)(2) and revised.

9. Paragraph (d) is added.

The revisions and addition read as follows:

§ 301.6323(g)–1 Refiling of notice of tax lien.

(a) *In general*—(1) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required filing period (described in paragraph (c) of this section). If two or more notices of lien are filed with respect to a particular tax assessment, and each notice of lien contains a certificate of release that releases the lien when the required refiling period ends, the failure to comply with the provisions of paragraphs (b)(1)(i) and (c) of this section in respect to one of the notices of lien releases the lien and renders ineffective the refiling of any other notice of lien.

* * * * *.

(3) *Effect of failure to refile.* (i) If the Internal Revenue Service fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice of lien is not effective, after the expiration of the required filing period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. If a notice of lien contains a certificate of release that releases the lien at the end of the required refiling period and the notice of lien is not refiled during this period, the lien is extinguished and the notice of lien is ineffective with respect to—

(A) Property which is the subject matter of a suit, to which the United States is a party, commenced prior to the expiration of the required filing period; and

* * * * *

(ii) However, if a notice of lien does not contain a certificate of release that releases the lien at the end of the required refiling period, the failure to refile during the required refiling period will not affect the existence of the lien nor the effectiveness of the notice with respect to property which is the subject matter of a suit commenced prior to the expiration of the required refiling period, or property which has been levied upon prior to the expiration of such period.

(4) *Filing of new notice.* If a notice of lien is not refiled, and the notice of lien contains a certificate of release that automatically releases the lien when the required refiling period ends, the lien is released as of that date and is no longer in existence. The Internal Revenue Service must revoke the release before it can file a new notice of lien. This new filing must meet the requirements of section 6323(f) and § 301.6323(f)–1 and is effective from the date on which such filing is made.

(b) * * *

(3) *Examples.* The following examples illustrate the provisions of this section:

Example 1. A, a delinquent taxpayer, is a resident of State M and owns real property in State N. In accordance with § 301–6323–f(1), notices of lien are filed in States M and N. The notices of lien contain certificates of release that release the lien at the end of the required refiling period. In order to continue the effect of the notice of lien filed in either M or N, the IRS must refile, during the required refiling period, the notice of lien with the appropriate office in M as well as with the appropriate office in N.

* * * * *

Example 5. D, a delinquent taxpayer, is a resident of State M and owns real property in States N and O. In accordance with § 301.6323(f)–1, the Internal Revenue Service files notices of lien in M, N, and O States. Nine years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P, and at that time the Internal Revenue Service receives from D a notification of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. On a date which is 9 years and 7 months after the date of the assessment shown on the notice of lien, the IRS properly refiles notices of lien in M, N, and O which refilings are sufficient to continue the effect of each of the notices of lien. The Internal Revenue Service is not required to file a notice of lien in P because D did not notify the Internal Revenue Service of his change of residence to P more than 89 days prior to the date each of the refilings in M, N, and O was completed.

* * * * *

(c) *Required filing period*—(1) *In general.* For the purpose of this section, except as provided in paragraph (c)(2) of this section, the term *required filing period* means—

(i) The 1-year period ending 30 days after the expiration of 10 years after the date of the assessment of the tax; and

(ii) The 1-year period ending with the expiration of 10 years after the close of the preceding required refiling period for such notice of lien.

(2) *Examples.* The following examples illustrate the provisions of this paragraph:

Example 1. On March 10, 1998, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 10, 1998, in accordance with § 301.6323(f)–1, a notice of lien is filed. The notice of lien filed on July 10, 1998, is effective through April 9, 2008. The first required refiling period for the notice of lien begins on April 10, 2007, and ends on April 9, 2008. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 10, 1998, through April 9, 2018. The second required refiling period for the notice of lien begins on April 10, 2017, and ends on April 9, 2018.

Example 2. Assume the same facts as in *Example 1*, except that the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (April 10, 2007, through April 9, 2008). A notice of lien is filed on June 9, 2009, in accordance with § 301.6323(f)–1. This notice is ineffective if the original notice contained a certificate of release, as the certificate of release would have had the effect of extinguishing the lien as of April 10, 2008. The Internal Revenue Service could revoke the release and file a new notice of lien, which would be effective as of the date it was filed.

(d) *Effective/applicability date.* This section applies with respect to any notice of Federal tax lien filed on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 6. Section 301.6323(h)–1 is amended as follows:

1. Paragraphs (a)(2)(ii) and (a)(3) are revised.

2. A new paragraph (h) is added.

The revisions and addition read as follows:

§ 301.6323(h)–1 Definitions.

(a) * * *

(2) * * *

(ii) The following example illustrates the application of paragraph (a)(2):

Example. (i) Under the law of State X, a security interest in certificated securities, negotiable documents, or instruments may be perfected, and hence protected against a judgment lien, by filing or by the secured party taking possession of the collateral. However, a security interest in such intangible personal property is considered to be temporarily perfected for a period of 20 days from the time the security interest

attaches, to the extent that it arises for new value given under an authenticated security agreement. Under the law of X, a security interest attaches to such collateral when there is an agreement between the creditor and debtor that the interest attaches, the debtor has rights in the property, and consideration is given by the creditor. Under the law of X, in the case of temporary perfection, the security interest in such property is protected during the 20-day period against a judgment lien arising, after the security interest attaches, out of an unsecured obligation. Upon expiration of the 20-day period, the holder of the security interest must perfect its security interest under local law.

(ii) Because the security interest is perfected during the 20-day period against a subsequent judgment lien arising out of an unsecured obligation, and because filing or the taking of possession before the conclusion of the period of temporary perfection is not considered, for purposes of paragraph (a)(2)(i) of this section, to be a requisite action which relates back to the beginning of such period, the requirements of this paragraph are satisfied. Because filing or taking possession is a condition precedent to continued perfection, filing or taking possession of the collateral is a requisite action to establish such priority after expiration of the period of temporary perfection. If there is a lapse of perfection for failure to take possession, the determination of when the security interest exists (for purposes of protection against the tax lien) is made without regard to the period of temporary perfection.

(3) *Money or money's worth.* For purposes of this paragraph, the term *money or money's worth* includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A firm commitment to part with money, a security, tangible or intangible property, services, or other consideration reducible to a money value does not, in itself, constitute a consideration in money or money's worth. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

* * * * *

(h) *Effective/applicability date.* This section applies as of the date these regulations are published as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–8082 Filed 4–16–08; 8:45 am]

BILLING CODE 4830–01–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Freedom of Information Act; Implementation

AGENCY: Central Intelligence Agency.

ACTION: Proposed rule.

SUMMARY: Consistent with the Freedom of Information Act (FOIA), as amended by the ''Openness Promotes Effectiveness in our National Government Act of 2007,'' and Executive Order 13392, the Central Intelligence Agency (CIA) has undertaken and completed a review of its public FOIA regulations that govern certain aspects of its processing of FOIA requests. As a result of this review, the Agency proposes to revise its FOIA regulations to more clearly reflect the current CIA organizational structure, record system configuration, and FOIA policies and practices and to eliminate ambiguous, redundant and obsolete regulatory provisions. As required by the FOIA, the Agency is providing an opportunity for interested persons to submit comments on these proposed regulations.

DATES: Submit comments on or before May 19, 2008.

ADDRESSES: Submit comments in writing to the Director of Information Management Services, Central Intelligence Agency, Washington, DC 20505, or by fax to 703–613–3007.

FOR FURTHER INFORMATION CONTACT: Joseph W. Lambert, Director of Information Management Services, Central Intelligence Agency, Washington, DC 20505 or by telephone, 703–613–1352.

SUPPLEMENTARY INFORMATION: Consistent with the FOIA, as amended by the ''Openness Promotes Effectiveness in our National Government Act of 2007,'' and Executive Order 13392, the CIA has undertaken and completed a review of its public FOIA regulations that govern certain aspects of its processing of FOIA requests. As a result of this review, the Agency proposes to revise its FOIA regulations to more clearly reflect the current CIA organizational structure, record system configuration, and FOIA policies and practices and to eliminate ambiguous, redundant and obsolete regulatory provisions. These proposed regulatory changes are intended to enhance the administration and operations of the Agency's FOIA program by increasing the transparency and clarity of the regulations governing the Agency's FOIA program. The proposed regulations would establish the positions and responsibilities of the Agency's Chief FOIA Officer, the FOIA Public Liaison and the FOIA Requester Service Center in the Agency's public FOIA regulations. Following the promulgation of Executive Order 13392, the Director of the Central Intelligence Agency designated a senior official to serve as the CIA's Chief FOIA Officer with Agency-wide responsibility for efficient and appropriate compliance with the FOIA. In addition, the Agency created a FOIA Requester Service Center and designated FOIA Public Liaisons to enhance the operation of the Agency's FOIA program and the Agency's responsiveness to FOIA requesters and the public. Consistent with both Executive Order 13392 and the ''Openness Promotes Effectiveness in our National Government Act of 2007,'' the proposed regulations incorporate into the CIA's public FOIA regulations the important functions the Agency's Chief FOIA Officer, the FOIA Public Liaison and the FOIA Requester Service Center have been performing for the past several years. By formally recognizing the key roles these entities play in the Agency's FOIA processes, the proposed regulations promote the administration of a citizen-centered FOIA program and provide the public with important information about the assistance these entities can offer to FOIA requesters and the public.

The proposed regulations would eliminate current regulatory provisions that have had the potential to cause confusion and ambiguity and would more clearly reflect the Agency's current FOIA policies and practices.

The proposed regulations would clarify and confirm the Agency's current FOIA practices of processing FOIA requests and appeals on a ''first in, first out'' basis using two or more processing queues based on the amount of work or time or both involved and of moving a FOIA request to the front of the processing queue when the Agency has granted that requester's request for expedited processing.

The proposed regulations would eliminate current regulatory provisions that have had the potential to cause confusion and ambiguity regarding how a requester may appeal a denial of a fee

waiver request and how the Agency would adjudicate that appeal. With this change, the Agency's public FOIA regulations would contain clear guidance on how requesters may exercise their rights to appeal denials of fee waiver requests and would remove any ambiguity concerning the responsibility of the Agency Release Panel to adjudicate such appeals.

List of Subjects in 32 CFR Part 1900

Classified information, Freedom of Information.

As stated in the preamble, the CIA proposes to amend 32 CFR part 1900 as follows:

PART 1900—PUBLIC ACCESS TO CIA RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

1. Authority citation for part 1900 is revised to read as follows:

Authority: 50 U.S.C. 401–442; 50 U.S.C. 403a–403v; 5 U.S.C. 552; E.O. 13292, 68 FR 15315–15334, 3 CFR, 2004 Comp., p. 196–218; E.O. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

2. Amend § 1900.02 by adding new paragraphs (p), (q), and (r) to read as follows:

§ 1900.02 Definitions.

* * * * *

(p) *Chief FOIA Officer* means the senior CIA official, at the CIA's equivalent of the Assistant Secretary level, who has been designated by the Director of the CIA to have Agency-wide responsibility for the CIA's efficient and appropriate compliance with the FOIA.

(q) *FOIA Requester Service Center* means the office within the CIA where a FOIA requester may direct inquiries regarding the status of a FOIA request or an expression of interest he or she filed at the CIA, requests for guidance on narrowing or further defining the nature or scope of his or her FOIA request, and requests for general information about the FOIA program at the CIA.

(r) *FOIA Public Liaison* means the CIA supervisory official(s) who shall assist in the resolution of any disputes between a FOIA requester and the Agency and to whom a FOIA requester may direct a concern regarding the service he or she has received from CIA and who shall respond on behalf of the Agency as prescribed in these regulations.

3. Revise § 1900.03 to revise to read as follows:

§ 1900.03 Contact for general information and requests.

(a) To file a FOIA request, an expression of interest, or an administrative appeal, please direct your written communication to CIA Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, or via facsimile at (703) 613–3007, in accordance with the requirements of these regulations.

(b) To inquire about the status of a FOIA request or an expression of interest, to request guidance on narrowing or further defining the nature or scope of a FOIA request, or to obtain general information about the FOIA program at CIA, please direct your inquiry to the CIA FOIA Requester Service Center, Central Intelligence Agency, Washington, DC 20505, via facsimile at (703) 613–3007, or via telephone at (703) 613–1287. Collect calls cannot be accepted.

(c) If you are a FOIA requester with a concern about the service you received from the CIA or a member of the public with a suggestion, comment, or complaint regarding the Agency's administration of the FOIA, please direct your concern to the FOIA Public Liaison, Central Intelligence Agency, Washington, DC 20505, via facsimile at (703) 613–3007, or via telephone at (703) 613–1287. Collect calls cannot be accepted.

4. Revise § 1900.04 to read as follows:

§ 1900.04 Suggestions and complaints.

The CIA remains committed to administering a results-oriented and citizen-centered Freedom of Information Act program, to processing requests in an efficient, timely and appropriate manner, and to working with requesters and the public to continuously improve Agency FOIA operations. The Agency welcomes suggestions, comments, or complaints regarding its administration of the FOIA. Members of the public shall address all such communications to the FOIA Public Liaison as specified at 32 CFR 1900.03. The Agency will respond as determined feasible and appropriate under the circumstances. Requesters seeking to raise concerns about the service received from the CIA FOIA Requester Service Center may contact the FOIA Public Liaison after receiving an initial response from the CIA FOIA Requester Service Center. The FOIA Public Liaison shall assist in the appropriate resolution of any disputes between a FOIA requester and the Agency.

5. Revise § 1900.11 to read as follows:

§ 1900.11 Preliminary information.

Members of the public shall address all communications as specified at 32 CFR 1900.03. Any CIA office or CIA personnel receiving a written communication from a member of the public that requests information or that references the FOIA shall expeditiously forward the communication to the CIA Information and Privacy Coordinator. CIA will not accept a request for information under the FOIA or an appeal of an adverse determination submitted by a member of the public who owes outstanding fees for information services at this or other federal agencies and will terminate the processing of any pending requests submitted by such persons to the CIA or to another agency.

6. Revise § 1900.12 to read as follows:

§ 1900.12 Requirements as to form and content.

(a) *Required information.* Requesters should identify their written communication as a request for information under the Freedom of Information Act. Requests must reasonably describe the records of interest sought by the requester. This means that the records requested must be described sufficiently so that Agency professionals who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. All requesters are encouraged to be as specific as possible in describing the records they are seeking by including the date or date range, the title of the record, the type of record (such as memorandum or report), the specific event or action to which the record refers, and the subject matter but requests for electronic communications must specify the dates and parties. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

(b) *Additional information for fee determination.* In addition, a requester should provide sufficient information to allow us to determine the appropriate fee category. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(c) *Otherwise.* The CIA FOIA Requester Service Center may contact a requester to seek additional or clarifying information or to assist the requester in reformulating his or her request when the request does not meet the requirements of these regulations. A requester seeking to narrow or further define the nature or scope of his or her request may contact the CIA FOIA Requester Service Center as specified at 32 CFR 1900.03.

§ 1900.13 [Amended]

7. Amend § 1900.13 by removing and reserving paragraph (c).

8. Amend § 1900.33 by revising paragraph (b) to read as follows:

§ 1900.33 Allocation of resources; agreed extensions of time.

* * * * *

(b) *Discharge of FOIA responsibilities.* The Chief FOIA Officer shall monitor the Agency's compliance with the requirements of the FOIA and administration of its FOIA program. The Chief FOIA Officer shall keep the Director of the CIA, the General Counsel of the CIA, and other officials appropriately informed regarding the Agency's implementation of the FOIA and make recommendations, as appropriate. The Chief FOIA Officer shall designate one of more CIA FOIA Public Liaisons who shall report to the Chief FOIA Officer. The CIA FOIA Public Liaison shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes between requesters and the Agency. Components shall exercise due diligence in their responsibilities under the FOIA. Components must allocate a reasonable level of resources to process accepted FOIA requests and administrative appeals on a ''first in, first out'' basis using two or more processing queues based on the amount of work or time or both involved to ensure that smaller as well as larger cases receive equitable attention, except that when a request for expedited processing has been granted under these regulations components must move that request to the front of the processing queue.

* * * * *

§ 1900.34 [Amended]

9. Amend § 1900.34 by removing and reserving paragraph (a).

Joseph W. Lambert,

Director, Information Management Services.

[FR Doc. E8–8090 Filed 4–16–08; 8:45 am]

BILLING CODE 6310–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[FWS–R7–SM–2008–0020; 70101–1261–0000L6]

RIN 1018–AV69

Subsistence Management Regulations for Public Lands in Alaska—2008–09 and 2009–10 Subsistence Taking of Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2008–09 and 2009–10 regulatory years. These regulations have been subject to an annual public review cycle, but starting in 2008 the Federal Subsistence Management Program will provide a public review process for subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years. The Program will also address customary and traditional use determinations during the applicable biennial cycle. This cycle adjustment does not affect the public's ability to submit special action requests or requests for reconsideration, as outlined in the regulations. When final, the resulting rulemaking will replace the subsistence wildlife taking regulations, which expire on June 30, 2008. This rule would also amend the customary and traditional use determinations of the Federal Subsistence Board and the general regulations on taking of wildlife.

DATES: *Public meetings:* The Board will discuss and evaluate the proposed regulatory changes during a public meeting scheduled to be held in Anchorage, AK, beginning on April 29, 2008. In addition, the Federal Subsistence Regional Advisory Councils held public meetings to receive proposals to change this proposed rule on several dates from August 28, 2007, through October 30, 2007. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

Public comments: We will accept comments received or postmarked by April 22, 2008. In addition, the Federal Subsistence Board accepted written public comments and proposals to change this proposed rule until January 4, 2008.

ADDRESSES: *Public meetings:* The Federal Subsistence Board will meet at the Coast International Inn at 3450 Aviation Avenue, Anchorage, Alaska 99517.

Public comments: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AV69; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Under title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries first published regulations to carry out this program in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations several times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program

Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Federal Subsistence Board

Consistent with subparts A, B, and C of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- the Alaska Regional Director, U.S. Fish and Wildlife Service;
- the Alaska Regional Director, U.S. National Park Service;
- the Alaska State Director, U.S. Bureau of Land Management;
- the Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- the Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participated in the development of regulations for subparts A, B, and C, which set forth the basic program, and they continue to work together on regularly revising the subpart D regulations, which, among other things, set forth specific harvest seasons and limits.

Federal Subsistence Regional Advisory Councils

In administering the program, the Secretaries divide Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

Public Review Process—Comments, Proposals, and Public Meetings

The Regional Councils had a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board (Board), through the Regional Councils, held meetings on this proposed rule at the following Alaska locations, on the following dates:

Region 1—Southeast Regional Council	Haines	September 24, 2007.
Region 2—Southcentral Regional Council	Anchorage	October 16, 2007.
Region 3—Kodiak/Aleutians Regional Council	Kodiak	September 20, 2007.
Region 4—Bristol Bay Regional Council	Naknek	October 1, 2007.
Region 5—Yukon-Kuskokwim Delta Regional Council	Marshall	September 5, 2007.
Region 6—Western Interior Regional Council	Galena	October 30, 2007.
Region 7—Seward Peninsula Regional Council	Nome	October 10, 2007.
Region 8—Northwest Arctic Regional Council	Kotzebue	September 4, 2007.
Region 9—Eastern Interior Regional Council	Fairbanks	October 16, 2007.
Region 10—North Slope Regional Council	Barrow	August 28, 2007.

We published notice of specific dates, times, and meeting locations in local and Statewide newspapers prior to the meetings. The amount of work on each Regional Council's agenda determined the length of each Regional Council meeting.

The Board made the written proposals to change the subpart D hunting and trapping regulations and subpart C customary and traditional use determinations available for comment last summer via the Federal Subsistence Management Program's Web site: *http://alaska.fws.gov/asm/index.cfm*. During November 2007, the Board compiled the written proposals and distributed them for an additional public review in a 30-day public comment period. During the public comment period for submitted proposals, which ended on January 4, 2008, the Board accepted written public comments on distributed proposals. The proposals may be viewed at: *http://alaska.fws.gov/asm/law.cfm?wp=1*.

The Regional Councils held a second series of meetings in February and March 2008, to assist the Councils in developing recommendations on proposals to the Board. The Regional Councils accepted comments on the published proposals to change hunting and trapping and customary and traditional use determination regulations at those winter meetings.

The Board will discuss and evaluate the proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, AK, beginning on April 29, 2008. The Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting. You may provide additional oral testimony on specific proposals before the Board at that time. At that public meeting, the Board will then deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify wildlife harvest regulations and customary and traditional use determinations must include the following information:

(a) Name, address, and telephone number;

(b) The section and/or paragraph of this proposed rule for which you are suggesting changes;

(c) A statement explaining why the change is necessary;

(d) The proposed wording change; and

(e) Any additional information that you believe will help the Board in evaluating your proposal. The Board rejects proposals that fail to include the above information, or proposals that are beyond the scope of authorities in §__.24, subpart C (the regulations governing customary and traditional use determinations), and §§__.25, and __.26, subpart D (the general and specific regulations governing the subsistence take of wildlife). During the April 29, 2008 meeting, the Board may defer review and action on some proposals to allow time for local cooperative planning efforts, or to acquire additional needed information, or if workload exceeds work capacity of staff, Regional Councils, or the Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

Proposed Changes From the 2007–08 Wildlife Seasons and Harvest Limit Regulations

Subpart D regulations are subject to periodic review and revision. Through 2007, the public review process was annual. Starting in 2008, the Federal Subsistence Management Program will address subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and

shellfishing regulations in odd-numbered years. The Board will also address customary and traditional use determinations during each applicable biennial cycle. This change in schedule is necessary due to Federal budget priorities.

The text of the 2007–08 subparts C and D final rule published December 27, 2007 (72 FR 73426), serves as the foundation for this 2008–10 subparts C and D proposed rule. The regulations relating to wildlife contained in this proposed rule will take effect on July 1, 2008, unless elements are changed by subsequent Board action following the public review process outlined above in this document.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

An environmental assessment prepared in 1997 dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with the concurrence of the Secretary of Agriculture, determined that the expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Compliance with section 810 of ANILCA—We completed a section 810 analysis under ANILCA as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was also conducted in accordance with section 810. This evaluation supports the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold for notice and hearings under ANILCA section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0075, which expires October 31, 2009. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. This rule does not restrict any existing sport or commercial use of wildlife on public lands, and wildlife uses will continue at essentially the same levels as they currently occur. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, would equate to about $6 million in food value Statewide. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and

wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no substantial direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information—Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Charles Ardizzone, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part 242 and 50 CFR part 100 for the 2008–10 regulatory years.

Dated: February 22, 2008.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board, Assistant Regional Director, Office of Subsistence Management, U.S. Fish and Wildlife Service.

Dated: February 22, 2008.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. E8–7854 Filed 4–16–08; 8:45 am]

BILLING CODE 3410–11–P, 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[FWS–R7–EA–2007–0025; 70101–1335–0064L6]

RIN 1018–AV72

Subsistence Management Regulations for Public Lands in Alaska—2009–2010 and 2010–2011 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for fishing seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2009–2010 and 2010–2011 regulatory years. These regulations have been subject to an annual public review cycle, but starting in 2008 the Federal Subsistence Management Program will provide a public review process for subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfishing regulations in odd-numbered years. The Program will also address customary and traditional use determinations during the applicable biennial cycle. This cycle adjustment does not affect the public's ability to submit special action requests or requests for reconsideration, as outlined in the regulations. When final, the resulting rulemaking would replace the subsistence fish and shellfish taking regulations that will expire on March 31, 2009. This rule would also amend the customary and traditional use determinations of the Federal Subsistence Board and the general regulations on taking of fish and shellfish.

DATES: We will accept comments and proposals received or postmarked on or before June 30, 2008. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings on this proposed rule between August 24, 2008, and October 25, 2008. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AV72; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Under title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries first published regulations to carry out this program in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations several times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General

Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Federal Subsistence Board

Consistent with subparts A, B, and C of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- The Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participated in the development of regulations for subparts A, B, and C, which set forth the basic program, and they continue to work together on regularly revising the subpart D regulations, which, among other things, set forth specific harvest seasons and limits.

Federal Subsistence Regional Advisory Councils

In administering the program, the Secretaries divide Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

Public Review Process—Comments, Proposals, and Public Meetings

The Regional Councils had a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board (Board), through the Regional Councils, held meetings on this proposed rule at the following Alaska locations, on the following dates:

Region 1—Southeast Regional Council	Sitka	February 26, 2008.
Region 2—Southcentral Regional Council	Cordova	March 12, 2008.
Region 3—Kodiak/Aleutians Regional Council	Kodiak	March 25, 2008.
Region 4—Bristol Bay Regional Council	Dillingham	March 24, 2008.
Region 5—Yukon-Kuskokwim Delta Regional Council	Lower Kalskag	March 20, 2008.
Region 6—Western Interior Regional Council	Fairbanks	February 28, 2008.
Region 7—Seward Peninsula Regional Council	Nome	February 21, 2008.
Region 8—Northwest Arctic Regional Council	Kotzebue	March 7, 2008.
Region 9—Eastern Interior Regional Council	Tok	March 17, 2008.
Region 10—North Slope Regional Council	Barrow	March 4, 2008.

We published notice of specific dates, times, and meeting locations in local and Statewide newspapers prior to the meetings. The amount of work on each Regional Council's agenda determined the length of each Regional Council meeting.

During May 2008, we will compile and distribute for additional public review the written proposals to change subpart D fishing regulations and subpart C customary and traditional use determinations. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is currently scheduled to end on June 30, 2008.

We will hold a second series of Regional Council meetings from August 24 through October 25, 2008, at which the Regional Councils will develop recommendations to the Board. You may also present comments on published proposals to change fishing and customary and traditional use determination regulations to the Regional Councils at those fall meetings.

The Board will discuss and evaluate the proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, Alaska, beginning on January 13, 2009. The Regional Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting. You may provide additional oral testimony on specific proposals before the Board at that time. At that public meeting, the Board will then deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify fish and shellfish harvest regulations and customary and traditional use determinations must include the following information:

(a) Name, address, and telephone number;

(b) The section and/or paragraph of this proposed rule for which you are suggesting changes;

(c) A statement explaining why the change is necessary;

(d) The proposed wording change; and

(e) Any additional information that you believe will help the Board in evaluating your proposal. The Board rejects proposals that fail to include the above information, or proposals that are beyond the scope of authorities in §__.24, subpart C (the regulations governing customary and traditional use determinations), and §§__.25, __.27, and __.28, subpart D (the general and specific regulations governing the subsistence take of fish and shellfish). During the January 13, 2009 meeting, the Board may defer review and action on some proposals to allow time for local cooperative planning efforts, or to acquire additional needed information, or if workload exceeds work capacity of staff, Regional Councils, or the Board. These deferrals will be based on recommendations of the affected Regional Council(s), staff members, and on the basis of least harm to the subsistence user and the resource involved. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

Proposed Changes From the 2008–09 Fish and Shellfish Seasons and Harvest Limit Regulations

Subpart D regulations are subject to periodic review and revision. Through 2007, the public review process was annual. Starting in 2008, the Federal Subsistence Management Program will address subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfishing regulations in odd-numbered years. The Board will also address customary and traditional use determinations during each applicable biennial cycle. This change in schedule

is necessary due to Federal budget priorities.

The text of the 2008–09 subparts C and D final rule published March 14, 2008 (73 FR 13761), serves as the foundation for this 2009–11 subparts C and D proposed rule. The regulations relating to fish and shellfish contained in this proposed rule will take effect on April 1, 2009, unless elements are changed by subsequent Board action following the public review process outlined above in this document.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

An environmental assessment prepared in 1997 dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with the concurrence of the Secretary of Agriculture, determined that the expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Compliance with section 810 of ANILCA—We completed a section 810 analysis under ANILCA as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the January 8, 1999, rule (64 FR 1276) was also conducted in accordance with section 810. This evaluation supports the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold for notice and hearings under ANILCA section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0075, which expires October 31, 2009. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. This rule does not restrict any existing sport or commercial use of wildlife on public lands, and wildlife uses will continue at essentially the same levels as they currently occur. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, would equate to about $6 million in food value Statewide. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no substantial direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information—Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Charles Ardizzone, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part 242 and 50 CFR part 100 for the 2009–11 regulatory years.

Dated: March 17, 2008.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board, Assistant Regional Director, Office of Subsistence Management, U.S. Fish and Wildlife Service.

Dated: March 17, 2008.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. E8–7841 Filed 4–16–08; 8:45 am]

BILLING CODE 4310–55–P, 3410–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7771]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before July 16, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Maps (FIRMs) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7771, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility

Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet (above ground)		Communities affected
		Effective	Modified	
Habersham County, Georgia, and Incorporated Areas				
Soquee River Tributary	Approximately 770 feet upstream of confluence with Soquee River.	+1307	+1308	City of Clarkesville.
	Approximately 380 feet downstream of State Highway 385/Alternate 17/U.S. Highway 441 Business/Grant Street.	+1307	+1308	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
**BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Clarkesville
Maps are available for inspection at City Hall, 210 East Water Street, Clarkesville, GA 30523.

Iberia Parish, Louisiana, and Incorporated Areas				
Bayou Petite Anse-Deblanc Coulee-Segura Branch.	Approximately 300 ft upstream of U.S. 90 eastbound.	None	+10	Unincorporated Areas of Iberia Parish.
	Approximately 300 ft downstream of Southern Pacific RR.	+11	+12	
Commercial Canal	Approximately 300 ft downstream of Southern Pacific RR.	+9	+10	Unincorporated Areas of Iberia Parish, City of New Iberia.
	Approximately 450 ft upstream of Admiral Doyle Drive..	None	+11	
Duboin Canal	Approximately 3,000 ft downstream of Admiral Doyle Drive.	None	+11	Unincorporated Areas of Iberia Parish, City of New Iberia.
	Intersection with Adrian St	None	+16	
Jacks Coulee	Approximately 300 ft downstream of Weeks Island Road.	None	+10	Unincorporated Areas of Iberia Parish.
	Approximately 300 ft upstream of U.S. Hwy 90	None	+11	
Jefferson Canal	Approximately 300 ft downstream of Southern Pacific RR.	None	+3	Unincorporated Areas of Iberia Parish.
	Approximately 100 ft upstream of Jefferson Island Road.	None	+6	
Little Valley Bayou	Approximately 300 ft downstream of Patoutville Road.	None	+9	Unincorporated Areas of Iberia Parish.
	Approximately 600 ft upstream of Smith Road	None	+11	
Peebles Coulee	Approximately 3,250 ft upstream of J. Allen Daigre Drive.	None	+12	Unincorporated Areas of Iberia Parish, City of New Iberia.
	Approximately 300 ft downstream of Weeks Island Road.	+10	+12	
Poufette Canal—Bayou Petite Anse-Segura Branch.	Approximately 100 ft upstream of Norris Road	None	+10	Unincorporated Areas of Iberia Parish.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet (above ground)		Communities affected
		Effective	Modified	
	Approximately 300 ft downstream of Southern Pacific RR.	+11	+13	
Rodere Canal	Approximately 300 ft downstream of Southern Pacific RR.	+9	+12	Unincorporated Areas of Iberia Parish, City of New Iberia.
	Approximately 2,900 ft upstream of Center Street	None	+14	
Tete Bayou	Approximately 500 ft downstream of LA 3195	None	+13	Unincorporated Areas of Iberia Parish, City of New Iberia.
	Approximately 250 feet downstream of N. Lewis St.	None	+15	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
**BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of New Iberia
Maps are available for inspection at 457 E. Main St, New Iberia, LA 70560.

Unincorporated Areas of Iberia Parish
Maps are available for inspection at 209 W. Main St., Suite 102, New Iberia, LA 70560.

Livingston Parish, Louisiana, and Incorporated Areas

Lake Maurepas—Entire Shoreline.	Highest elevation approximately 40,800 feet south of confluence with Amite River.	None	+9	Unincorporated Areas of Livingston Parish.
	Highest elevation at confluence with Tickfaw River	None	+10	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
**BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Livingston Parish
Maps are available for inspection at 29261 Frost Rd., Livingston, LA 70754.

Davidson County, North Carolina, and Incorporated Areas

Little Brush Fork Tributary 1	At the confluence with Little Brushy Fork	None	+748	Town of Midway, Unincorporated Areas of Davidson County.
	Approximately 0.7 mile upstream of the confluence of Little Brushy Fork Tributary 1A.	None	+781	
Little Brushy Fork	At the confluence with Brushy Fork	None	+732	Town of Midway, Unincorporated Areas of Davidson County.
	Approximately 1.8 miles upstream of Tom Livengood Road (State Road 1719).	None	+861	
Little Brushy Fork Tributary 1A.	At the confluence with Little Brushy Fork Tributary 1	None	+757	Town of Midway, Unincorporated Areas of Davidson County.
	Approximately 2,000 feet upstream of Garden Valley Drive.	None	+786	
Miller Creek	At the confluence with Muddy Creek	None	+690	Town of Midway.
	Approximately 250 feet upstream of North Payne Road (State Road 1510).	+810	+811	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet (above ground)		Communities affected
		Effective	Modified	

**BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Midway

Maps are available for inspection at Midway Town Hall, 125 Gum Tree Road, Midway, NC.

Unincorporated Areas of Davidson County

Maps are available for inspection at Davidson County Governmental Center, Planning and Zoning Department, 913 Greensboro Street, Lexington, NC.

Mercer County, North Dakota, and Incorporated Areas

Antelope Creek	100 feet Upstream from Mercer County Road 18/53rd Ave. SW.	+1743	+1745	Mercer County, City of Hazen.
	100 feet Upstream from Walk Bridge on Abandoned BNSF Railway Grade.	+1756	+1757	
Antelope Creek Split	100 feet Upstream from BNSF Railway Bridge	None	+1754	Mercer County, City of Hazen.
	200 feet Upstream from 13th Ave. W.	None	+1758	
East Tributary Reach #1	100 feet Downstream from Roll Drive	None	+1806	City of Beulah.
	100 feet Downstream from Beulah Dam	None	+1840	
East Tributary Reach #2	100 feet Upstream from BNSF Railway Bridge	+1780	+1781	City of Beulah.
	100 feet Upstream from Beulah Eagle Road	+1792	+1795	
North Tributary	Confluence with East Tributary	None	+1797	Mercer County, City of Beulah.
	100 feet Upstream from Seventh St.	None	+1819	
Upstream Hazen Tributary	100 feet Upstream from the Confluence with Antelope Creek.	+1754	+1753	City of Hazen.
	1000 feet Upstream from the Confluence with Antelope Creek.	+1754	+1753	
West Hazen Tributary	100 feet Upstream from Confluence with Antelope Creek.	+1748	+1750	City of Hazen.
	200 feet Upstream from Divide Street	None	+1764	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

**BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Beulah

Maps are available for inspection at 120 Central Avenue North, Beulah, ND 58523.

City of Hazen

Maps are available for inspection at 146 Main St. E., Hazen, ND 58545.

Mercer County

Maps are available for inspection at 1021 Arthur Street, Stanton, ND 58571–0039.

Raleigh County, West Virginia, and Incorporated Areas

Soak Creek	Approximately 100 feet downstream of State Route 29.	None	+2305	Unincorporated Areas of Raleigh County, Town of Sophia.
	Approximately 80 feet upstream of McKinney Hollow Road.	None	+2328	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

**BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate. Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet (above ground)		Communities affected
		Effective	Modified	

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Sophia

Maps are available for inspection at Sophia Town Hall, 100 East Railroad Avenue, Sophia, WV 25921.

Unincorporated Areas of Raleigh County

Maps are available for inspection at Raleigh County Commission Building, 116 ½ North Heber Street, Beckley, WV 25801.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 31, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–8324 Filed 4–16–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7773]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before July 16, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7773, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
City of Brookport, Illinois					
Illinois	City of Brookport	Ohio River	Approximately 2,460 feet upstream of U.S. Highway 45.	None	*339
			Approximately 3,680 feet downstream of U.S. Highway 45.	None	*339

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Brookport

Maps are available for inspection at City Hall, 209 Ohio Street, City of Brookport, IL 62910.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Bay County, Florida, and Incorporated Areas				
Beefwood Branch	At the confluence with Bayou George	None	+24	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 19,900 feet upstream of the confluence with Bayou George.	None	+62	
Big Branch	At the confluence with Bayou George	None	+27	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 24,800 feet upstream of the confluence with Bayou George.	None	+60	
Dry Branch	Approximately 615 feet upstream of the confluence with Bayou George.	None	+10	Town of Cedar Grove, Unincorporated Areas of Bay County.
	Approximately 800 feet downstream of Highway 231	None	+11	
Hammock Branch	At the confluence with Bayou George	None	+23	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 25,000 feet upstream of the confluence with Bayou George.	None	+50	
Island Branch	At the confluence with Bayou George	None	+30	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 16,900 feet upstream of the confluence with Bayou George.	None	+59	
Unnamed Tributary 1 to Bayou George.	Approximately 650 feet upstream of the confluence with Bayou George.	None	+16	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 1,400 feet upstream of Nadine Road	None	+50	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Unnamed Tributary 10 to Bayou George.	At the confluence with Bayou George	None	+37	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 3,900 feet upstream of the confluence with Bayou George.	None	+50	
Unnamed Tributary 11 to Bayou George.	At the confluence with Bayou George	None	+57	Unincorporated Areas of Bay County.
	Approximately 8,600 feet upstream of the confluence with Bayou George.	None	+64	
Unnamed Tributary 2 to Bayou George.	Approximately 420 feet upstream of the confluence with Bayou George.	None	+25	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 2,170 feet upstream of John Pitts Road.	None	+47	
Unnamed Tributary 3 to Bayou George.	Approximately 400 feet upstream of the confluence with Bayou George.	None	+23	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 5,500 feet upstream of John Pitts Road.	None	+56	
Unnamed Tributary 4 to Bayou George.	Approximately 315 feet upstream of the confluence with Bayou George.	None	+31	Town of Cedar Grove, City of Panama City, Unincorporated Areas of Bay County.
	Approximately 7,780 feet upstream of John Pitts Road.	None	+56	
Unnamed Tributary 5 to Bayou George.	Approximately 560 feet upstream of the confluence with Bayou George.	None	+25	Town of Cedar Grove, Unincorporated Areas of Bay County.
	Approximately 1,200 feet upstream of Bayou George Drive.	None	+43	
Unnamed Tributary 6 to Bayou George.	Approximately 125 feet upstream of the confluence with Bayou George.	None	+38	Unincorporated Areas of Bay County.
	Approximately 1,400 feet upstream of the confluence with Bayou George.	None	+38	
Unnamed Tributary 7 to Bayou George.	At John Pitts Road	None	+19	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 7,500 feet upstream of Old Majette Tower Road.	None	+54	
Unnamed Tributary 8 to Bayou George.	At the confluence with Bayou George	None	+23	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 6,700 feet upstream of the confluence with Bayou George.	None	+46	
Unnamed Tributary 9 to Bayou George.	At the confluence with Bayou George	None	+24	City of Panama City.
	Approximately 1,800 feet upstream of the confluence with Bayou George.	None	+35	
Water Branch	At the confluence with Bayou George	None	+47	Unincorporated Areas of Bay County.
	Approximately 22,000 feet upstream of the confluence with Bayou George.	None	+60	
White Bucky Branch	Approximately 900 feet upstream of the confluence with Bayou George.	None	+26	City of Panama City, Unincorporated Areas of Bay County.
	Approximately 9,000 feet upstream of the confluence with Bayou George.	None	+54	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

ADDRESSES

City of Panama City
Maps are available for inspection at Panama City Hall, Engineering Department, 9 Harrison Avenue, Panama City, FL.

Town of Cedar Grove
Maps are available for inspection at Cedar Grove Town Hall, 2728 East 14th Street, Cedar Grove, FL.

Unincorporated Areas of Bay County
Maps are available for inspection at Bay County Planning and Zoning Department, 707 Jenks Avenue, Suite B, Panama City, FL.

Washington County, Idaho, and Incorporated Areas

Monroe Creek	Approximately 350 feet downstream of Union Pacific Railroad.	None	+2108	City of Weiser.
	Approximately 50 feet downstream of Park Street	None	+2125	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Weiser
Maps are available for inspection at 55 West Idaho Street, Wieser, ID 83672.

Vermilion Parish, Louisiana, and Incorporated Areas

Gulf of Mexico	Confluence of Gulf of Mexico and Vermilion Bay	+14	+15	Unincorporated Areas of Vermilion Parish.
	Entire coastline east of intersection with Rollover Bayou.	+15	+17	
Vermilion Bay	Divergence with Gulf of Mexico	+15	+14	Unincorporated Areas of Vermilion Parish.
	Confluence with Gulf of Mexico	+14	+15	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Vermilion Parish
Maps are available for inspection at 100 N. State St., Suite 200, Abberville, LA 70510.

Renville County, Minnesota, and Incorporated Areas

Minnesota River	Approximately 4,850 feet downstream of the Nicollet County Boundary.	+818	+819	City of Franklin, City of Morton, Unincorporated Areas of Renville County.
	Approximately 4,600 feet upstream of the Chippewa County Boundary.	+882	+883	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Franklin

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Maps are available for inspection at City Hall, 320 Second Avenue East, Franklin, MN 55333.				
City of Morton				
Maps are available for inspection at City Hall, 221 West 2nd Street, Morton, MN 56270.				
Unincorporated Areas of Renville County				
Maps are available for inspection at Renville County Office Building, 105 South 5th Street, Room 311, Olivia, MN 56277.				
Lee County, Mississippi, and Incorporated Areas				
Campbelltown Creek	Approximately 375 feet upstream of State Highway 145.	None	+340	City of Baldwyn, Unincorporated Areas of Lee County.
	Approximately 4,802 feet upstream of County Road 2790.	None	+359	
Chiwapa Creek	Approximately 3,480 feet upstream of the confluence with Chiwapa Creek Tributary 15.	None	+269	Unincorporated Areas of Lee County.
	Approximately 3,180 feet upstream of the confluence with Chiwapa Creek Tributary 16.	None	+274	
Coonewah Creek	At Interstate 45	None	+242	Unincorporated Areas of Lee County, Town of Shannon.
	Approximately 6,220 feet upstream of State Highway 145.	None	+252	
Coonewah Creek Tributary 3	Approximately 1,210 feet downstream of County Road 484.	None	+254	Unincorporated Areas of Lee County.
	Approximately 620 feet upstream of County Road 520	None	+266	
Euclatubba Creek	At the confluence of Mud Creek	None	+280	Unincorporated Areas of Lee County, Town of Saltillo.
	Approximately 1,990 feet upstream of State Highway 145.	None	+302	
Mud Creek	Approximately 4,465 feet downstream of Interstate 78	+265	+266	Unincorporated Areas of Lee County, City of Tupelo, Town of Saltillo.
	Approximately 80 feet upstream of County Road 681	None	+289	
Reeds Branch	Approximately 2,410 feet downstream of confluence with Reeds Branch Tributary 1.	None	+269	Unincorporated Areas of Lee County.
	Approximately 1,565 feet upstream of County Road 900.	None	+302	
Sand Creek	At the confluence with Mud Creek	None	+280	Unincorporated Areas of Lee County, Town of Saltillo.
	At State Highway 363	None	+307	
Sand Creek Tributary 1	At the confluence of Sand Creek	None	+299	Unincorporated Areas of Lee County, Town of Saltillo.
	Approximately 2,190 feet upstream of Fellowship Road.	None	+326	
Sand Creek Tributary 2	At the confluence of Sand Creek	None	+304	Town of Saltillo.
	Approximately 6,890 feet upstream of confluence with Sand Creek.	None	+343	
Town Creek	Approximately 1,575 feet downstream of the confluence with Kings Creek.	+256	+257	City of Tupelo, Unincorporated Areas of Lee County.
	Approximately 2,500 feet upstream of Mount Vernon Road.	None	+279	
	Approximately 1,070 feet downstream of confluence of Town Creek Tributary 9.	None	+291	
	At Lee/Pontotoc county boundary	None	+328	
Town Creek Tributary 1	Approximately 1,900 feet downstream from railroad	None	+226	Unincorporated Areas of Lee County, Town of Nettleton.
	Approximately 1,080 feet upstream of railroad	None	+238	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Baldwyn

Maps are available for inspection at Baldwyn City Hall, 202 South Second Street, Baldwyn, MS 38824.

City of Tupelo

Maps are available for inspection at Tupelo Planning Department, Tupelo City Hall, 117 North Broadway, 2nd Floor, MS 38802.

Town of Nettleton

Maps are available for inspection at Nettleton Town Hall, 124 Short Street, Nettleton, MS 38858.

Town of Saltillo

Maps are available for inspection at 205 South Second Street, Saltillo, MS 38866.

Town of Shannon

Maps are available for inspection at Shannon Town Hall, 1426 North Street, Shannon, MS 38868.

Unincorporated Areas of Lee County

Maps are available for inspection at Lee County Courthouse, 201 West Jefferson, Suite A, Tupelo, MS 38801.

Summit County, Ohio, and Incorporated Areas

Brandywine Creek	Approximately 2,700 feet above confluence with Cuyahoga River.	None	+649	Unincorporated Areas of Summit County, City of Macedonia, Village of Boston Heights, Village of Hudson.
	Approximately 100 feet upstream Ashley Drive	None	+1093	
Brandywine Creek Tributary	Approximately 500 feet downstream of Prospect Street.	+1034	+1033	Village of Hudson.
	Approximately 900 feet upstream of Ravenna Street	+1061	+1070	
Brandywine Creek Tributary 5.	At confluence with Brandywine Creek	+966	+965	City of Macedonia.
	Approximately 2,200 feet above confluence with Brandywine Creek.	None	+969	
Brandywine Creek Tributary Overflow.	Approximately 450 feet above Boston Mills Road	None	+1025	Village of Hudson.
	Approximately 100 feet downstream from divergence from Brandywine Creek Tributary.	None	+1053	
Indian Creek	At confluence with Brandywine Creek	+965	+959	Unincorporated Areas of Summit County, City of Macedonia.
	Approximately 3,700 feet upstream of Ledge Road	+1032	+1031	
Indian Creek Tributary 3	At confluence with Indian Creek	+1011	+1010	City of Macedonia.
	Approximately 1,700 feet upstream of Ledge Road	+1019	+1016	
Indian Creek Tributary 4	Mouth at Indian Creek	+978	+977	City of Macedonia.
	Approximately 760 feet upstream of Bedford Road	None	+986	
Mud Brook	At mouth at Cuyahoga River	None	+748	City of Akron, City of Cuyahoga Falls, City of Stow, Village of Hudson.
	Approximately 3,400 feet upstream of Streetsboro Road.	None	+999	
Mud Brook Tributary 1	At confluence with Mud Brook	+989	+985	City of Stow.
	Approximately 2,480 feet upstream of Hudson Street	None	+988	
Mud Brook Tributary 1B	At confluence with Mud Brook Tributary 1	None	+986	Village of Silver Lake, City of Stow.
	Approximately 100 feet upstream of Carter Lumber Drive.	+994	+999	
Mud Brook Tributary 3	Approximately 1,300 feet downstream of Allen Road	+993	+991	City of Stow.
	Approximately 700 feet upstream of Allen Road	+1003	+1006	
North Fork Yellow Creek	Just downstream of Granger Road	+911	+913	Unincorporated Areas of Summit County.
	Approximately 75 feet upstream of Bath Road	None	+951	
North Fork Yellow Creek Tributary.	Approximately 100 feet above confluence with North Fork Yellow Creek.	+924	+923	Unincorporated Areas of Summit County.
	Approximately 100 feet upstream of Bath Road	None	+977	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Powers Brook	Approximately 100 feet downstream of Railroad	None	+1001	Village of Hudson, City of Stow.
	Approximately 100 feet upstream of Norton Road	None	+1074	
Powers Brook Tributary 2	At confluence with Powers Brook	+1049	+1051	City of Stow.
	Approximately 1,120 feet upstream of Stow Road	None	+1058	
Yellow Creek	Approximately 550 feet downstream of Riverview Road.	+734	+735	Unincorporated Areas of Summit County, City of Akron, City of Cuyahoga Falls.
	Approximately 50 feet upstream of Medina Line Road	None	+1066	
Yellow Creek Overflow	Approximately 70 feet above confluence with Yellow Creek.	None	+1039	Unincorporated Areas of Summit County.
	Approximately 1,600 feet above confluence with Yellow Creek.	None	+1050	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Akron
Maps are available for inspection at 166 South High Street, Suite 100, Akron, OH 44308.

City of Cuyahoga Falls
Maps are available for inspection at 2310 Second Street, Cuyahoga Falls, OH 44221.

City of Macedonia
Maps are available for inspection at 9691 Valley View Road, Macedonia, OH 44056.

City of Stow
Maps are available for inspection at 3760 Darrow Road, Stow, OH 44224.

Unincorporated Areas of Summit County
Maps are available for inspection at 1030 East Tallmadge Avenue, Akron, OH 44310.

Village of Boston Heights
Maps are available for inspection at 5595 Transportation Boulevard, Suite 100, Hudson, OH 44236.

Village of Hudson
Maps are available for inspection at 27 East Main Street, Hudson, OH 44236.

Village of Silver Lake
Maps are available for inspection at 2961 Kent Road, Silver Lake, OH 44224.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 7, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–8323 Filed 4–16–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 88

RIN 0991–AB46

Office of Global Health Affairs; Regulation on the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Global Health Affairs within the U.S. Department of Health and Human Services (HHS) is issuing this Notice of Proposed Rulemaking (NPRM) to obtain input from stakeholders and other interested parties regarding the separation that must exist between a recipient of HHS funds to implement HIV/AIDS programs and activities under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (the ''Leadership Act''), Public Law No. 108–25 (May 27, 2003), and an affiliate organization that engages in activities that are not consistent with a policy opposing prostitution and sex trafficking, as required under Section 301(f) of the Leadership Act.

The proposed rule provides additional information on the policy requirement expressed in this law for entities that receive grants, contracts, or cooperative agreements from the U.S. Department of Health and Human Services (''HHS'') to implement programs or projects under the authority

of the Leadership Act. Specifically, it describes the legal, financial, and organizational separation that must exist between these recipients of HHS HIV/AIDS funds and an affiliate organization that engages in activities that are not consistent with a policy opposing prostitution and sex trafficking.

DATES: To be assured consideration, written comments must be received on or before May 19, 2008.

ADDRESSES: You may submit written comments to the following address: U.S. Department of Health and Human Services, Office of Global Health Affairs, Room 639H, 200 Independence Avenue, SW., Washington, DC 20201. Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., at Room 639H, 200 Independence Avenue, SW., Washington, DC 20201. Please call ahead to 1–202–690–6174, and ask for a representative in the Office of Global Health Affairs to schedule your visit.

You may also submit written comments electronically via the Internet at *http://www.regulations.gov*, or via e-mail to *OGHA_Regulation_Comments@hhs.gov*. You can download an electronic version of the NPRM at *http://www.regulations.gov*. HHS/OGHA has also posted the NPRM and related materials to its Web site at the following Internet address: *http://www.globalhealth.gov/*.

FOR FURTHER INFORMATION CONTACT: William R. Steiger, PhD, Office of Global Health Affairs, Hubert H. Humphrey Building, Room 639H, 200 Independence Avenue, SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed rule implements a provision in the Leadership Act, section 301(f), 22 U.S.C. 7631(f), concerning restrictions on the use of funds covered by the Leadership Act. This provision prohibits the use of any funds made available to carry out the Leadership Act, or any amendment made by this Act, to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.

There is a related provision in the Leadership Act, Section 301(e), 22 U.S.C. 7631(e), that prohibits the use of funds made available to carry out the Act, or any amendment made by the Act, to promote or advocate the legalization or practice of prostitution or sex trafficking. This restriction, however, does not apply to the use of these funds for palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. Section 301(f) of the Leadership Act should be read together with Section 301(e).

II. Background

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. It is critical to the effectiveness of the Leadership Act, and to the U.S. Government's foreign policy that underlies this effort, that organizations that receive Leadership Act funds maintain the integrity of the Leadership Act programs and activities they implement, and not confuse the U.S. Government's message opposing prostitution and sex trafficking by holding positions that conflict with this policy.

This proposed rule is designed to provide additional clarity for contracting and grant officers, contracting officers' technical representatives, program officials and implementing partners (e.g., grantees, contractors) of HHS regarding the application of language in Notices of Availability, Requests for Proposals, and other documents pertaining to the policy requirement expressed in 22 U.S.C. 7631(f), which provides that organizations that are receiving Leadership Act funds must have a policy explicitly opposing prostitution and sex trafficking.

Any entity that receives Leadership Act funds for HIV/AIDS programs directly or indirectly (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking.

The U.S. Government is issuing this proposed rule on ''Organizational Integrity'' to clarify that the Government's organizational partners that have adopted a policy opposing prostitution and sex-trafficking may, consistent with this policy requirement, maintain an affiliation with separate organizations that do not have such a policy, provided such affiliations do not threaten the integrity of the Government's programs and its message opposing prostitution and sex trafficking, as specified in this proposed rule. To maintain program integrity, adequate separation, as outlined in this proposed rule, is required between an affiliate that expresses views on prostitution and sex trafficking contrary to the Government's message and any federally funded partner organization.

This proposed rule applies to funds used by the U.S. Department of Health and Human Services to implement HIV/AIDS programs and activities under the Leadership Act. The rule proposes certification language that organizations must provide to receive grants, cooperative agreements, contracts, and other funding instruments made available by HHS.

All prime recipients that receive U.S. Government funds (''prime recipients'') must certify compliance with the proposed Rule on Organizational Integrity prior to actual receipt of such funds, in a written statement addressed to the HHS agency's grants or contract officer. The certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with an award under the Leadership Act.

All recipients must insert provisions to implement the applicable parts of this proposed rule in all sub-agreements under their awards. These provisions must be express terms and conditions of the sub-agreement; must acknowledge that compliance with this proposed rule is a prerequisite to the receipt and expenditure of U.S. Government funds in connection with this document; and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement, prior to the end of its term.

Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this proposed rule.

Nothing in the regulation is intended to lessen or relieve relevant prohibitions on Federal Government funding under other applicable Federal laws.

III. Discussion of the Proposed Rule

These sections discuss the proposed rule by defining the terms relevant to this proposed rule and discussing the restrictions on organizations that receive Leadership Act funds.

Section 88.1 Definitions

This Section defines the terms that are pertinent to this rule. Specifically, we propose the following definitions:

''*Commercial sex act*'' means any sex act on account of which anything of value is given to or received by any person.

''*Prime recipients*'' are contractors, grantees, applicants or awardees who receive

Leadership Act funds for HIV/AIDS programs directly from HHS.

''*Prostitution*'' means procuring or providing any commercial sex act.

A ''*recipient*'' is a contractor, grantee, applicant or awardee who receives Leadership Act funds for HIV/AIDS programs directly or indirectly from HHS. Recipients are both prime recipients and sub-recipients.

''*Sex trafficking*'' means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

''*Sub-recipients*'' are contractors, grantees, applicants or awardees, other than the prime recipient, who receive Leadership Act funds for HIV/AIDS programs indirectly from HHS through a contract, grant or other financial agreement with a recipient.

Section 88.2 Objective Integrity of Recipients

This section of the proposed rule describes the separation that must exist between a recipient of HHS funds to implement HIV/AIDS programs and activities under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (the ''Leadership Act''), Public Law No. 108–25 (May 27, 2003), and an affiliate organization that engages in activities that are not consistent with a policy opposing prostitution and sex trafficking, as required under Section 301(f) of the Leadership Act.

Paragraph (a) sets forth criteria for establishing the objective integrity and independence that a recipient must have from an affiliate organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking.

The criteria for affiliate independence in this proposed rule are modeled on criteria upheld as facially constitutional by the U.S. Court of Appeals for the Second Circuit in *Velazquez* v. *Legal Services Corp.*, 164 F.3d 757, 767 (2d Cir. 1999), and *Brooklyn Legal Services Corp.* v. *Legal Services Corp.,* 462 F.3d 219, 229–33 (2d Cir. 2006), cases involving similar organization-wide limitations applied to recipients of Federal funding.

This proposed rule clarifies that an independent organization affiliated with a recipient of Leadership Act funds need not have a policy explicitly opposing prostitution and sex trafficking for the recipient to maintain compliance with the policy requirement. The independent affiliate's position on these issues will have no effect on the recipient organization's eligibility for Leadership Act funds, so long as the affiliate satisfies the criteria for objective integrity and independence detailed in this proposed rule. By ensuring adequate separation between the recipient and affiliate organizations, these criteria guard against a public perception that the affiliate's views on prostitution and sex-trafficking may be attributed to the recipient organization, and thus to the Government, thereby avoiding the risk of confusing the Government's message opposing prostitution and sex trafficking.

Under Paragraph (b) of this section, an organization is ineligible to receive any Federal funds for HIV/AIDS programs made available under the Leadership Act, unless it has provided the certifications required by § 88.3.

Section 88.3 Certifications

This section of the proposed rule describes the certifications required to receive Leadership Act funding from HHS.

The required certification implements the Organizational Integrity Section through an Organizational Integrity Certification, located at Section 88.3(d)(1), in which a recipient of Leadership Act funds administered by an HHS agency certifies it has objective integrity and independence from any affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking.

The certification contains Acknowledgement and Sub-Recipient Certifications at Section 88.3(d)(2) and (3). These require each recipient to acknowledge that its provision of the certifications is a prerequisite to receiving Federal funds; that the Federal Government can stop or withdraw those funds if HHS finds a certification to have been inaccurate, or that such a certification becomes inaccurate; and that the prime recipient will ensure all its sub-recipients also provide the required certifications. As detailed in the Certifications Section, a sub-recipient must, at a minimum, provide the same certifications as those provided by the prime recipient.

Paragraph (e) contains information regarding requirements for the renewal of the certifications. HHS requires each recipient to provide renewed certifications each Federal Fiscal Year, in alignment with the award cycle. Additionally, current funding recipients, as of the effective date of the regulation, must file a certification upon any extension, amendment, or modification of the funding instrument that extends the term of such instrument, or adds additional funds to it.

IV. Impact Analysis

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. Since enactment of the policy requirement in the Leadership Act, HHS has required its contract solicitations and grant announcements for discretionary Leadership Act funding to include a section regarding ''Prostitution and Related Activities.'' The statute explicitly requires certifications.

Executive Order 12866—Regulatory Planning and Review

The HHS has drafted and reviewed this regulation in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. HHS has determined this rule is a ''significant regulatory action'' under Executive Order 12866, Section 3(f)(4), Regulatory Planning and Review, because it raises novel legal or policy issues that arise out of legal mandates and the President's priorities, and, accordingly, the Office of Management and Budget has reviewed it.

This benefits of this rule are to ensure that an appropriate separation exists between recipients of Leadership Act funds and affiliated entities that engage in activities inconsistent with a policy opposing prostitution and sex trafficking, which will prevent confusion of the Government's message opposing prostitution and sex trafficking in Leadership Act programs and activities.

The cost of this rule is unlikely to be significant. Since 2004, HHS has required recipients of Emergency Plan funding to certify their compliance with Section 301(f) of the Leadership Act, and HHS/OGHA issued a ''Guidance on Organizational Integrity,'' similar to this proposed regulation, on July 23, 2007. Although HHS/OGHA directed HHS agencies to disseminate this Guidance to their contractors and grantees that receive funding under the Leadership Act, and provided means for the public to comment on that Guidance, including whether the document is economically significant under definitions provided by the Office of Management and Budget, no one has submitted comments.

Executive Order 13132—Federalism

Executive Order 13132 on Federalism requires Federal Departments and agencies to consult with State and local Government officials in the development of regulatory policies with implications for Federalism. This rule does not have Federalism implications for State or local Governments, as defined in the Executive Order.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered Federal Department or agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that could result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The HHS has determined this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal Governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal Departments and agencies to determine whether a proposed policy or regulation could affect family well-being. If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law. These regulations will not have an impact on family well-being, as defined in this legislation.

Paperwork Reduction Act

To obtain or retain Leadership Act funding for HIV/AIDS programs and activities, HHS will require recipients to submit certifications. The title of the information collection is ''*Certification Regarding the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities.*'' The documents are necessary to ensure that recipients of Leadership Act funding have objective integrity and independence from any affiliated organizations that engage in activities inconsistent with a policy opposing prostitution and sex trafficking.

HHS estimates that 555 respondents will prepare documents to validate that recipients have objective integrity and independence from affiliated organizations that engage in activities inconsistent with policies opposing prostitution and sex trafficking. HHS therefore estimates annual aggregate burden to collect the information as follows:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Certifications	555	1	.5	277.5

HHS has submitted this information collection to the Office of Management and Budget (OMB) for regular approval, and HHS will accept comments from the public, in accordance with the Paperwork Reduction Act of 1995. Comments received during the comment period should primarily focus on the following: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) how to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., by permitting the electronic submission of responses).

All comments and suggestions, or questions regarding additional information, should go to HHS/OGHA.

List of Subjects in 45 CFR Part 88

Administrative practice and procedure, Federal aid programs, Grant programs, Grants administration.

Dated: February 26, 2008.

William R. Steiger,

Director, Office of Global Health Affairs.

Approved: March 18, 2008.

Michael O. Leavitt,

Secretary of Health and Human Services.

For the reasons stated in the preamble, the Office of Global Health Affairs amends 45 CFR to add part 88 as follows:

PART 88—ORGANIZATIONAL INTEGRITY OF ENTITIES IMPLEMENTING PROGRAMS AND ACTIVITIES UNDER THE LEADERSHIP ACT

Sec.

Authority: 22 U.S.C. 7631(f) and 5 U.S.C. 301.

§ 88.1 Definitions.

For the purposes of this part:

''*Commercial sex act*'' means any sex act on account of which anything of value is given to or received by any person.

''*Prime recipients*'' are contractors, grantees, applicants or awardees who receive Leadership Act funds for HIV/AIDS programs directly from HHS.

''*Prostitution*'' means procuring or providing any commercial sex act.

A ''*recipient*'' is a contractor, grantee, applicant or awardee who receives Leadership Act funds for HIV/AIDS programs directly or indirectly from HHS.

''*Sex trafficking*'' means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

''*Sub-recipients*'' are contractors, grantees, applicants or awardees, other than prime recipients, who receive Leadership Act funds for HIV/AIDS programs indirectly from HHS through a contract, grant or other financial agreement with a recipient.

§ 88.2 Organizational integrity of recipients.

(a) A recipient must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking . Recipients include both prime recipients and subrecipients. A recipient will be found to have objective integrity and independence from such an organization if:

(1) The affiliated organization is a legally separate entity;

(2) The affiliated organization receives no transfer of Leadership Act funds, and Leadership Act funds do not subsidize activities inconsistent with a policy opposing prostitution and sex trafficking; and

(3) The recipient is physically and financially separate from the affiliated organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to the following:

(i) The existence of separate personnel, management, and governance;

(ii) The existence of separate accounts, accounting records, and timekeeping records;

(iii) The degree of separation from facilities, equipment and supplies used by the affiliated organization to conduct activities inconsistent with a policy opposing prostitution and sex trafficking, and the extent of such activities by the affiliate;

(iv) The extent to which signs and other forms of identification that distinguish the recipient from the affiliated organization are present, and signs and materials that could be associated with the affiliated organization or activities inconsistent with a policy opposing prostitution and sex trafficking are absent; and

(v) The extent to which HHS, the U.S. Government and the project name are protected from public association with the affiliated organization and its activities inconsistent with a policy opposing prostitution and sex trafficking in materials, such as publications, conferences and press or public statements.

(b) An organization is ineligible to receive any Leadership Act funds unless it has provided the certifications required by § 88.3.

§ 88.3 Certifications.

(a) HHS agencies shall include the certification requirements for any grant, cooperative agreement, contract, or other funding instrument in the public announcement of the availability of the grant, cooperative agreement, contract, or other funding instrument.

(b) Unless the recipient is otherwise excepted, a person authorized to bind the recipient shall execute the certifications for the grant, cooperative agreement, contract, or other funding instrument.

(c) A prime recipient must submit its certifications to the grant or contract officer of the HHS agency that will award funds. A sub-recipient must provide its certifications to the prime recipient. The prime recipient will submit certifications from its sub-recipients when requested to do so by the HHS grant or contract officer.

(d) The certifications shall state as follows:

(1) Organizational Integrity Certification: ''I hereby certify that [name of recipient], a recipient of the funds made available through this [grant, cooperative agreement, contract, or other funding instrument], as defined in 45 CFR part 88, from any affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking.''

(2) Acknowledgement Certification: ''I further certify that the recipient acknowledges that these certifications are a prerequisite to receipt of U.S. Government funds in connection with this [grant, cooperative agreement, contract, or other funding instrument], and that any violation of these certifications shall be grounds for termination by HHS in accordance with the Federal Acquisition Regulations, part 49 for contracts, 45 CFR parts 74 or 92 for grants and cooperative agreements, as well as any other remedies as provided by law.''

(3) Sub-Recipient Certification: ''I further certify that the recipient will include these identical certification requirements in any [grant, cooperative agreement, contract, or other funding instrument] to a sub-recipient of funds made available under this [grant, cooperative agreement, contract, or other funding instrument], and will require such sub-recipient to provide the same certifications that the recipient provided.''

(e) Prime recipients and sub-recipients of funds must file a renewed certification each Fiscal Year, in alignment with the award cycle. Prime recipients and sub-recipients that are already recipients as of the effective date of this regulation must file a certification upon any extension, amendment, or modification of the grant, cooperative agreement, contract, or other funding instrument that extends the term of such instrument, or adds additional funds to it.

[FR Doc. 08–1147 Filed 4–15–08; 10:34 am]

BILLING CODE 4150–38–P

Notices

Federal Register
Vol. 73, No. 75
Thursday, April 17, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974, System of Records

AGENCY: United States Agency for International Development.

ACTION: Significantly Altered System of Records Notice.

SUMMARY: The United States Agency for International Development (USAID) is issuing public notice of its intent to alter its system of records maintained in accordance with the Privacy Act of 1974, (5 U.S.C. 552a), as amended, entitled ''AID–8 Personnel Security and Suitability Investigatory Records.'' USAID is updating this system to reflect the current administrative status and enhance the descriptions of other data elements in order to provide further transparency into USAID's record-keeping practices.

DATES: Public comments must be received on or before May 19, 2008. Unless comments are received that would require a revision, this update to the system of records will become effective on May 27, 2008.

ADDRESSES: You may submit comments:

Paper Comments

- Fax: (703) 666–1466.
- Mail: Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue, NW., Suite 2.12–003, Washington, DC 20523–2120.

Electronic Comments

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail: *privacy@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact, Mark Webb, Chief, USAID: Office of Security-Personnel, Information, Domestic Security (SEC/PIDS), (202) 712–0990. For privacy-related issues, please contact Rhonda Turnbow, Deputy Chief Privacy Officer (202) 712–0106.

SUPPLEMENTARY INFORMATION: USAID is undertaking a review of all its system of records notices to ensure that it maintains complete, accurate, timely, and relevant records. As a result of this effort, USAID is proposing to revise its ''Personnel Security and Suitability Investigatory Records'' system of records notice.

The ''Personal Security and Suitability Investigatory Records'' are maintained by the USAID Office of Security (SEC). SEC has been charged with providing security services to protect USAID personnel and facilities, safeguarding national security information, and promoting and preserving personal integrity. SEC receives investigative authority from the Office of Management and Budget (OMB) to conduct personnel security investigations for USAID and all other Federal Agencies/Departments permitted under the delegation.

The revisions in this system notice update the authorities for the maintenance of the system, provide a more detailed description of the nature of the records, revises and clarifies the purpose of the system, expands the categories of individuals covered by this system, adds and updates routine use disclosures, updates points of contact and address information, and updates the system locations. Due to the number of revisions USAID has rewritten the system of records notice in its entirety.

In accordance with 5 U.S.C. 552(r), a report concerning this system has been submitted to the Office of Management and Budget and to the requisite congressional committees.

Dated: April 10, 2008.

Philip M. Heneghan,

Chief Privacy Officer.

USAID–008

SYSTEM NAME:

Personnel Security and Suitability Investigatory Records.

SECURITY CLASSIFICATION:

Secret.

SYSTEM LOCATION:

Records covered by this system are maintained at the following location: USAID Office of Security, 1300 Pennsylvania Avenue, Washington, DC 20523.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals maintained in this system are: current and former USAID employees; contractor personnel (Personal Service Contractors and Institutional Contractors); applicants for employment; persons and entities performing business with USAID to include consultants, volunteers, grantees and recipients; individuals employed from other Federal Agencies through a detail, Participating Agency Service Agreement, Resources Support Services Agreement, or the Interagency Personnel Act; paid and unpaid interns; and visitors requiring access to USAID facilities; and the U.S. Citizen and/or non-U.S. Citizen spouse, intended spouse, family members, and/or cohabitants of the above listed individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records maintained in this system are: name; address; date of birth; social security number (or other identifying number); citizenship status; information regarding an individual's character, conduct and behavior in the community where they presently live and/or previously lived; arrests and/or convictions; medical records; educational institutions attended; employment records; reports from interviews and other inquiries; electronic communication cables; facility access authorizations/restrictions; photographs; fingerprints; financial records including credit reports; previous clearances levels granted; resulting clearance levels; documentation of release of security files; request for special access; records of infractions; and records of facility accesses and credentials issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450: Security requirements for Government Employment; Homeland Security Presidential Directive 12 (HSPD–12): Policy for a Common Identification Standard for Federal Employees and Contractors; Executive Order 12968: Access to Classified Information, Executive Order 12333: United States Intelligence Activities, Executive Order 13381: Strengthening Processes Relating to Determining Eligibility for Access to

Classified National Security Information, and the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458).

PURPOSE(S):

The Office of Security gathers information in order to create investigative records which are used for processing personal security background investigations to determine eligibility to be awarded a federal security clearance, suitability determination for federal employment, access to federally owned/controlled facilities and access to federally owned/controlled information systems.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to USAID's Statement of General Routine Uses, the Office of Security may disclose information in this system as follows:

(1) To consumer reporting agencies in order to obtain consumer credit reports,

(2) To federal, international, state, and local law enforcement agencies, U.S. Government Agencies, courts, the Department of State, Foreign Governments, to the extent necessary to further the purposes of an investigation,

(3) Results of the investigation may be disclosed to the Department of State or other Federal Agencies for the purposes of granting physical and/or logical access to federally owned or controlled facilities and/or information systems in accordance with the requirements set forth in HSPD–12.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copies of information are maintained in file folders and secured using locked cabinets and safes. Electronic copies of information are secured using password protection and role-based protocols.

RETRIEVABILITY:

Records are retrievable by last name, social security number, and/or USAID assigned case number or other unique identifier attributed to the individual.

SAFEGUARDS:

Records are kept within the Office of Security secured space. Access to this space is controlled by electronic card readers, office personnel to control access, visitor escorts policy and supplemented by an armed response force. Administrative safeguards of records are provided through the use of internal Standard Operating Procedures and routine appraisal reviews of the personnel security and suitability program by the Office of Personnel Management.

RETENTION AND DISPOSAL:

Records are retained using the approved National Archives Records Administration, Schedule 18—Security and Protective Services Records.

SYSTEM MANAGER AND ADDRESS:

Director, USAID Office of Security, RRB Suite 2.06A, 1300 Pennsylvania Ave, NW., Washington, DC 20523.

NOTIFICATION PROCEDURES:

Records in this system are exempt from notification, access, and amendment procedures in accordance with subsection (k)(1) and (5) of the 5 U.S.C. 552a, and 22 CFR 215.14. Individuals wishing to inquire whether this system of records contains information about themselves should submit their inquires in writing to the USAID Chief Privacy Officer, 1300 Pennsylvania Avenue, NW., Room 2.12–003, Washington, DC 20523.

The request must be in writing and include the requestor's full name, date of birth, social security number (or other government-issued identity number) and current address. In addition, requestors must also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to a non-exempt record must submit the request in writing according to the ''Notification Procedures'' above. An individual wishing to request access to records in person must provide identity documents, such as a government-issued photo ID, sufficient to satisfy the custodian of the records that the requester is entitled to access.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on himself or herself must identify the information to be changed and the corrective action sought. Requests must follow the ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individual on whom it applies; independent sources such as other government agencies, state/local government; law enforcement agencies; credit bureaus; medical providers; educational institutions; private organizations; information provided by personal references; and through source interviews.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under the specific authority provided by subsection (k)(1), (3), and (5) of 5 U.S.C. 552a, USAID has promulgated rules specified in 22 CFR 215.14, that exempts this system from notice, access, and amendment requirements of 5 U.S.C. 552a, subsections (c)(3), (d); (e)(1); (e)(4); (G); (H); (I); and (f). The reasons for these exemptions are to maintain confidentiality of sources, National Security, and to prevent frustration of the federal investigative process.

[FR Doc. E8–8240 Filed 4–16–08; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 11, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR part 110).

OMB Control Number: 0581–0164.

Summary of Collection: The Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (Subtitle H, Sec. 1491) mandates the Department of Agriculture (USDA) in consultation with the Administrator of the Environmental Protection Agency (EPA), '' shall require certified applicators of federally restricted use pesticides to maintain records comparable to records maintained by commercial applicators in each state.'' In addition, USDA and the Administrator of EPA are required under section 1491(f) of the FACT Act to survey the records and develop and maintain a data base so USDA and the Administrator of EPA can prepare and publish annual pesticide use reports, copies of which must be transmitted to Congress. Agricultural Marketing Service (AMS) is charged with administering the Federal Pesticide Recordkeeping Program. AMS requires certified private applicators of federally restricted use pesticides to maintain records of all restricted use pesticide applications for a period of two years.

Need and Use of the Information: AMS will collect information using the ST–8, Pesticide Recordkeeping Inspection Form. In order to properly administer the Pesticide Recordkeeping Program, AMS needs to monitor and determine to what extent private applicators are complying with the program's requirements and identify the reasons for non/or partial compliance. AMS has the responsibility to assure records are kept to provide information to be utilized by licensed health care professionals for possible medical treatment. In addition, the stature requires USDA to submit annual reports to Congress pertaining to the use of restricted use pesticides in agricultural production.

Description of Respondents: Farms; State, Local or Tribal Government.

Number of Respondents: 592,233.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,797,714.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–8264 Filed 4–16–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–833

Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. The period of review is May 1, 2006, through April 30, 2007. This review covers imports of certain polyester staple fiber from one producer/exporter. We have preliminarily found that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days after the date of publication of this notice.

EFFECTIVE DATE: April 17, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0410 and (202) 482–4477, respectively.

Background

On May 25, 2000, the Department of Commerce (Department) published an antidumping duty order on certain polyester staple fiber (PSF) from Taiwan. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000). On May 1, 2007, the Department published a notice of ''Opportunity to Request Administrative Review'' of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 23796 (May 1, 2007). On May 31, 2007, Far Eastern Textile Limited (FET), a Taiwanese producer and exporter of the subject merchandise, and Wellman Inc. and Invista S.a.r.L. (collectively, the petitioners) requested an administrative review of FET. On June 29, 2007, the Department published a notice initiating an administrative review for PSF from Taiwan. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 72 FR 35690 (June 29, 2007). The period of review (POR) is May 1, 2006, through April 30, 2007.

Scope of the Order

The product covered by the order is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 5503.20.00.20 is specifically excluded from the order. Also specifically excluded from the order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from this order. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Fair–Value Comparisons

To determine whether FET's sales of PSF to the United States were made at less than normal value (NV), we compared export price (EP) to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the EP of individual U.S. transactions to the monthly weighted–

average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production'' section below.

Product Comparisons

We compared U.S. sales to monthly weighted–average prices of contemporaneous sales made in the home market. We found contemporaneous sales of identical merchandise in the home market for all U.S. sales.

Date of Sale

In its questionnaire responses, FET reported date of shipment as the date of sale for its home–market and U.S. sales. FET has stated that it permits home–market and U.S. customers to make order changes up to the date of shipment. According to FET's descriptions, the sales processes in the home market and to the United States are identical. Thus, record evidence demonstrates that the material terms of sale are not set before the date of invoice, which would normally result in using the date of invoice as the date of sale. See 19 CFR 351.401(i). Because the merchandise is always shipped on or before the date of invoice, we are using the date of shipment as the date of sale. See, *e.g.*, *Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 31283 (June 6, 2007) (unchanged in final, 72 FR 69193, December 7, 2007), and *Certain Cold–Rolled and Corrosion–Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172–73 (March 18, 1998).

Export Price

For sales to the United States, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States and because constructed export–price methodology was not otherwise warranted. We calculated EP based on the cost, insurance, and freight (CIF) price to unaffiliated purchasers in the United States. Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight from the plant to the port of exportation, brokerage and handling, harbor service fees, trade promotion fees, containerization expenses, international freight, and marine insurance. No other adjustments were claimed or allowed.

Normal Value

Selection of Comparison Market

To determine whether there was a sufficient volume of sales of PSF in the home market to serve as a viable basis for calculating NV, we compared the respondent's home–market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Pursuant to section 773(a)(1)(B) of the Act, because the respondent's aggregate volume of home–market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison purposes.

Cost of Production

FET made sales at prices below the cost of production that we disregarded in the most recently completed antidumping duty administrative review of FET. See *Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review*, 71 FR 60476 (October 13, 2006). Because of this, there were reasonable grounds to believe or suspect that the respondent made sales of the foreign like product in its comparison market at prices below the cost of production (COP) within the meaning of section 773(b) of the Act.

We calculated the COP on a product–specific basis, based on the sum of the respondent's costs of materials and fabrication for the foreign like product plus amounts for general and administrative (G&A) expenses, interest expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment in accordance with section 773(b)(3) of the Act.

We relied on COP information FET submitted in its cost questionnaire responses except we adjusted FET's reported cost of manufacturing to account for purchases of purified terephthalic acid and mono ethylene glycol from affiliated parties at non–arm's–length prices in accordance with the major–input rule pursuant to section 773(f)(3) of the Act.

On a product–specific basis, we compared the adjusted weighted–average COP figures for the POR to the home–market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP. The prices were exclusive of any applicable movement charges, packing expenses, warranties, and indirect selling expenses. In determining whether to disregard home–market sales made at prices below their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time.

We found that, for certain products, more than 20 percent of the respondent's home–market sales were at prices below the COP and, in addition, the below–cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales of the same product as the basis for determining NV in accordance with section 773(b)(1) of the Act.

Calculation of Normal Value

We calculated NV based on the price FET reported for home–market sales to unaffiliated customers which we determined were within the ordinary course of trade. We made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight from the plant to the customer and expenses associated with loading the merchandise onto the truck to be shipped. In addition, we made adjustments for differences in circumstances of sale (COS), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, by deducting direct selling expenses incurred on home–market sales (*i.e.*, imputed credit expenses and warranties) and adding U.S. direct selling expenses (*i.e.*, imputed credit expenses and bank charges).

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the EP. Sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See 19 CFR 351.412(c)(2); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*,

62 FR 61731, 61732 (November 19, 1997).

In order to determine whether a respondent made comparison–market sales at different stages in the marketing process than the U.S. sales, we review the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses incurred for each type of sale. The marketing process in the U.S. and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we consider the narrative responses of the respondent to determine where in the chain of distribution the sale appears to occur. Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison–market sales (*i.e.*, NV based on either home–market or third–country prices), we consider the starting prices before any adjustments. See *Micron Technology, Inc. v. United States, et al.*, 243 F.3d 1301, 1314–15 (CAFC 2001) (affirming this methodology).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same level of trade as the EP, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market. In comparing EP sales at a different level of trade in the comparison market, where available data show that the difference in level of trade affects price comparability, we make a level–of-trade adjustment under section 773(a)(7)(A) of the Act.

FET reported two channels of distribution (*i.e.*, direct sales to an end–user and direct sales to a distributor) and a single level of trade in the U.S. market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Because the sales process and selling functions FET performed for selling to the U.S. market did not vary by individual customers, the necessary condition for finding they constitute different levels of trade was not met. Accordingly, we determined that all of FET's U.S. sales constituted a single level of trade.

FET reported a single channel of distribution (*i.e.*, direct sales to end–users) and a single level of trade in the home market. Because the sales process and selling functions FET performed for selling to home–market customers did not vary by individual customers, we determined that all of FET's home–market sales constituted a single level of trade.

Finally, because there is only one home–market level of trade, it is not possible to calculate a level–of-trade adjustment. In addition, because all U.S. sales were EP sales, no offset contemplated for constructed export–price sales is appropriate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a dumping margin of 2.15 percent exists for FET for the period May 1, 2006, through April 30, 2007.

Public Comment

We will disclose the documents resulting from our analysis to parties in this review within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. Because we intend to conduct a verification prior to the issuance of the final results, we will notify interested parties of the schedule for filing case briefs and rebuttal briefs after we issue the verification report.

We intend to issue the final results of this review, including the results of our analysis of issues raised in any submitted written comments, within 120 days after the date on which the preliminary results are issued.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates for merchandise subject to this review. We will issue instructions to CBP 15 days after publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash–Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) the cash–deposit rate for FET will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash–deposit rate will be 7.31 percent, the all–others rate established in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 10, 2008.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E8–8299 Filed 4–16– 08; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XH22

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold a meeting of its Technical Monitoring and Compliance Team (TMCT)

DATES: The TMCT will meet on May 20–21, 2008.

ADDRESSES: Caribbean Fishery Management Council's Office, located in 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The TMCT will meet to discuss the items contained in the following agenda:

- Call to Order
- Revision of Available Data
-Commercial
-Recreational
-Fishery Independent Data
- Available Methods for Data Analyzes
- Other Business
- Next Meeting

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: April 14, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–8234 Filed 4–16–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XH26

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Committee and Advisory Panel, in May, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: These meetings will be held on Wednesday, May 14, 2008 at 9 a.m. and Thursday, May 15, 2008 at 9 a.m.

ADDRESSES: This meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Skate Advisors and Skate Oversight Committee will meet jointly to review Plan Development Team recommendations for management alternatives and specifications to achieve the Amendment 3 catch limits. The Committee may approve, revise, or substitute these recommendations for inclusion in Draft Amendment 3 and analysis in the Draft Environmental Impact Statement. The Committee may also identify a preferred alternative for the Draft Amendment or take up any other business related to skate management.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 14, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–8284 Filed 4–16–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XH23

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting of the North Pacific Fishery Management Council's Crab Plan Team (CPT).

SUMMARY: The Crab Plan Team will meet in Seattle, WA.

DATES: The meeting will be held on May 6–9, 2008. The meeting will be held from 9 a.m. until 5 p.m. on May 6th through May 8th and from 9 a.m. until 12 noon on May 9th.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE. Bldg 4, Traynor Room, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, at (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Plan Team will address the following issues: The new stock assessment review role by CPT, Crab Rationalization Program changes, Economic Data Review, the Economic SAFE report, Crab Research priorities, Assessments for Overfishing Fishing Level considerations by Tiers, rebuilding plan revisions, Finalize overfishing level recommendations for all crab species, finalize CPT report and other issues/new business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 14, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–8235 Filed 4–16–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XH24

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearings and scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings and scoping meetings beginning in early May. Public hearings will be held for Amendment 16 to the Snapper Grouper Fishery Management Plan (FMP) for the South Atlantic, the Fishery Ecosystem Plan (FEP), and the Comprehensive Ecosystem Amendment (CEA). Public scoping will be held for Amendment 18 to the Snapper Grouper FMP for the South Atlantic. See **SUPPLEMENTARY INFORMATION**.

DATES: The series of 5 public scoping meetings will be held May 7–15, 2008. All scoping meetings will be open from 3 p.m.–7 p.m. Council staff and area Council members will be available for presentations, informal discussions, and to answer questions. Members of the public will have an opportunity to go on record at any time during the meeting hours to record their comments on the public hearing and scoping issues for Council consideration. Written comments must be received in the South Atlantic Council's office by 5 p.m. on May 16, 2008. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405, or via email to: *SGAm16@safmc.net* for Amendment 16 to the Snapper Grouper FMP; *FEPComments@safmc.net* for the Fishery Ecosystem Plan; *CEAComments@safmc.net* for the Comprehensive Ecosystem Amendment; and *RedSnapperScoping@safmc.net* for scoping comments regarding Amendment 18 to the Snapper Grouper FMP. Comments are due to the Council office by 5 p.m.on May 16, 2008. Copies of the public hearing and scoping documents are available from Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free at (866) SAFMC–10. Copies will also be available online at *www.safmc.net* as they become available.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; fax: (843) 769–4520; email address: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Locations

The public hearings and scoping meeting will be held at the following locations:

1. May 7, 2008–Key Largo Grande, 97000 South Overseas Highway, Key Largo, FL 33037, telephone: (866) 597–5397;

2. May 9, 2008–Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, FL 32920, telephone: (321) 784–0000;

3. May 12, 2008–Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322, telephone: (912) 748–8888;

4. May 13, 2008–Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407, telephone: (843) 571–1000; and

5. May 15, 2008–Sheraton New Bern, 100 Middle Street, New Bern, NC 28560, telephone: (252) 638–3585.

The public hearings and scoping will address overlapping fisheries issues for the South Atlantic region. Public hearings will be held on the following:

1. Amendment 16 to the Snapper Grouper FMP–updates management reference points for gag grouper and vermilion snapper, including Maximum Sustainable Yield (MSY), Optimum Yield (OY), and Minimum Stock Size Threshold (MSST), which reflect current scientific information as provided by stock assessments and approved by the Scientific and Statistical Committee. In addition, the amendment would either alter current management measures or implement new management measures that would reduce current harvest levels to yields associated with the optimum yield and end overfishing of both stocks in the South Atlantic. The Council will also specify interim allocations between the commercial and recreational sectors.

Alternatives under consideration include a January–April spawning season closure for gag grouper for both commercial and recreational sectors where no fishing for and/or possession of gag would be allowed. In addition, during the closure no fishing for and/or possession of the following species would be allowed: black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney; dividing the commercial quota for gag grouper between two regions; reduction of the current 5–grouper aggregate bag limit for the recreational fishery; establishment of a directed commercial quota for vermilion snapper; adjusting recreational bag/size limits for vermilion snapper, and establishment of a recreational closed season for vermilion snapper. Amendment 16 also includes alternatives to reduce bycatch mortality by requiring the use of venting and dehooking tools and circle hooks to fish for snapper grouper species in the South Atlantic Exclusive Economic Zone (EEZ). Alternatives are also included for interim allocations for gag grouper and vermilion snapper.

2. Fishery Ecosystem Plan (FEP) for the South Atlantic and Comprehensive Ecosystem Amendment (CEA)–The Council is developing a Fishery Ecosystem Plan to act as a source document for various plan amendments. The CEA includes alternatives to amend the Coral FMP to establish deepwater coral Habitat Areas of Particular Concern (HAPCs) and address information updates and spatial requirements of the Essential Fish Habitat final rule. In addition, the CEA includes alternatives to amend the Golden Crab FMP to establish allowable golden crab fishing areas and require Vessel Monitoring Systems. Areas being considered for designation as HAPCs include: (a) Cape Lookout Lophelia Banks HAPC, (b) Cape Fear Lophelia Banks HAPC, (c) Blake Ridge Diapir, (d) the Stetson Reefs, Savannah and East Florida Lithoherms, and Miami Terrace HAPC, and (e) Portales Terrace HAPC. Alternatives also include proposals developed by the Council's Deepwater Shrimp Advisory Panel and Golden Crab Advisory Panel.

Public scoping will be held on the following:

Amendment 18 to the Snapper Grouper FMP–management measures necessary to end overfishing for red snapper in the South Atlantic region.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by 3 days prior to the start of each meeting.

Dated: April 14, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–8286 Filed 4–16–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 080404526–8528–01]

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of a new Privacy Act System of Records: COMMERCE/NOAA System-20, Search and Rescue Satellite Aided Tracking (SARSAT) 406 MHz Emergency Beacon Registration Database.

SUMMARY: The Search and Rescue Satellite Aided Tracking (SARSAT) is responsible for keeping and maintaining a registration database for 406 MHz emergency beacons as directed by the Federal Communication Commission (FCC). This database contains personally identifiable information that is required to be protected by the Privacy Act. The purpose for this system of records is to provide search and rescue (SAR) authorities with information about the user of the beacon such as the name, phone number, and emergency contact information. This information allows SAR authorities to shorten response times, and it provides a way to cancel false alerts quickly and safely; thereby, increasing safety for SAR authorities and decreasing costs to the government and the SAR system.

DATES: *Comment Date:* To be considered, written comments on the proposed new system of records must be submitted on or before May 19, 2008.

Effective Date: Unless comments are received, the new system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

ADDRESSES: Comments should be sent to: LT. Jeffrey Shoup, SARSAT Operations Support Officer, 4231 Suitland Road, Suitland, MD 20746–4304.

FOR FURTHER INFORMATION CONTACT: LT. Jeffrey Shoup, SARSAT Operations Support Officer, 4231 Suitland Road, Suitland, MD 20746–4304.

SUPPLEMENTARY INFORMATION: SARSAT is required by the FCC under 47 CFR parts 80, 87, and 95 to maintain a registration for emergency beacons that operate on the 406 MHz frequency. SARSAT has not found any probable or potential adverse effects of the proposal on the privacy of individuals. To minimize the risk of unauthorized access to the system of records, electronic data will be stored securely with access password protected and limited to those SARSAT program employees whose official duties require access.

COMMERCE/NOAA–20

SYSTEM NAME:

Search and Rescue Satellite Aided Tracking (SARSAT) 406 MHz Emergency Beacon Registration Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

NOAA/SARSAT, E/SP3, NSOF, 4231 Suitland Road, Suitland, MD 20746.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners of 406 MHz Emergency Position Indicating Radio Beacons (EPIRBs), 406 MHz Emergency Location Transmitters (ELTs), 406 MHz Personnel Locator Beacons (PLBs), and 406 MHz Ship Security Alerting System (SSAS) Beacons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Beacon Unique Identifier Number (Beacon ID), beacon category, beacon manufacturer, beacon model; owner name, owner address, owner e-mail address, owner telephone number by home, work, cellular, and fax; and name and telephone number of primary/alternate 24-hour emergency contact. Additional categories specifically for:

EPIRBs and SSAS beacon registrations—vessel information including usage, type, name, color, survival and radio equipment, vessel telephone numbers with call sign, Inmarsat number, cellular and MMSI number, federal/state registration number, length, capacity, and homeport; ELT registrations—aircraft information including registration (tail) number, type, manufacturer, model, color, seating capacity, radio equipment, survival equipment, principal airport; and

PLB registrations—general use data including usage, specific usage, and type.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 CFR parts 80, 87, and 95. The system is also authorized by the U.S. Office of Management & Budget (OMB) Control Number: OMB 0648–0295.

PURPOSE(S):

This information will assist search and rescue forces in carrying out their mission of rescue assistance and false alert abatement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed as follows:

1. A record in this system of records is used when a beacon alert is received at the United States Mission Control Center (USMCC) from a registered beacon. The information kept in the database is automatically forwarded to rescue coordination centers operated by the United States Air Force, United States Coast Guard, State Police/State SAR authority, or another foreign SARSAT Mission Control Center, should it be requested for use in a SAR case in a foreign search and rescue region. The information is used by search and rescue (SAR) controllers as

a tool to coordinate and resolve the SAR event.

2. Every two years, NOAA uses the information in the database to alert beacon owners to update and renew their registration in the database.

3. In the event that a system of records maintained by the Department to carry out its function indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute or contract, or rule, regulation or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

4. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

6. A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

7. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether the Freedom of Information Act (5 U.S.C. 552) requires disclosure thereof.

8. A record in this system of records may be disclosed to the appropriate manufacturer, medical authority, or law enforcement authority if the Department finds that it is in the best interest of the individual's safety.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized database stored behind open air firewall, electronic storage media, and paper records. All three mediums are retained in accordance with NOAA Records Disposition Handbook, Chapter 1404–02.

RETRIEVABILITY:

Records may be retrieved by unique beacon identification number, name of beacon owner, date of submittal, vessel name, aircraft name, or aircraft tail number; however, records can be accessed by any file element or any combination thereof.

ACCESS:

Due to the sensitive information stored in the registration database, access has been granted only to a limited number of personnel in accordance with this system of records routine uses provision. This access comes in four different categories; beacon owners, system administrators, SAR users, and vessel/aircraft inspectors.

- The beacon owner is granted access to his/her own registration information through the use of a user ID and an online password. Information can be accessed and updated by the beacon owner at any time.
- The system administrator consists of personnel at the USMCC who maintains and operates the registration database. Access to records is through the use of a user ID and an online password.
- The SAR user is limited to rescue coordination personnel responsible for SAR operations within internationally recognized SAR regions. Each individual SAR controller is issued a user ID and an online password. SAR controllers are given a view-only capability.
- The vessel or aircraft inspector is an approved representative of a federal agency charged with inspecting vessels or aircraft which includes verifying that the emergency beacons carried onboard the vessel or aircraft are properly registered. Each individual inspector is issued a user ID and an online password. Inspectors are given a view-only capability.

Exceptions to the above categories can only be approved by the SARSAT Program Steering Group. Consideration for access to the database by a requesting individual/agency will be based in light of their overall contribution to the SAR mission versus balancing the individual beacon owner's right to privacy.

SAFEGUARDS:

Operational controls—the SARSAT Beacon Registration Database Computer Systems are located at NOAA's USMCC facility in Suitland, Maryland. The facility has a uniformed guard service and the USMCC has key card controls limiting access to all production servers.

Technical controls—access controls are implemented on the production equipment through the use of system user names and passwords as well as database user names and passwords. Access logs are maintained and reviewed for any improprieties. The entire database is covered by an intrusion detection system that monitors and detects any attempt to access or hack any part of the database. Communications with web users are by Secure Sockets Layer (SSL) protocol to ensure safe transmission of information. In addition to the SSL, information that is sent to the database is transferred through two firewalls prior to storage and use in the USMCC. The computerized database is backed up daily and the information is housed in a Redundant Array of Independent Disks (RAID) shelf to minimize the risk of disk drive failure. Every month the data is backed up to tape and stored in a safe at an offsite location. The system is also certified and accredited according to federal guidelines.

Hardcopy records are maintained in areas that are accessible only to authorized personnel and stored in accordance with NOAA Records Disposition Handbook.

RETENTION AND DISPOSAL:

All records shall be retained and disposed of in accordance with NOAA Records Disposition Handbook, Chapter 1404–02, Departmental directives, and comprehensive records schedules.

SYSTEM MANAGER(S) AND ADDRESSES:

NOAA/SARSAT, E/SP3, NSOF, 4231 Suitland Road, Suitland, MD 20746.

NOTIFICATION PROCEDURE:

Beacon owners are notified by letter once registration information has been put into the database. Every two years thereafter, beacon owners are contacted by e-mail or letter to update their information or to confirm that their information is correct.

RECORD ACCESS PROCEDURE:

Requests from individuals regarding this system of records should be addressed to the system manager. Individuals with information in the database have the ability to review and

update their own individual information on the internet at *http://www.beaconregistration.noaa.gov.* User ID and user password are set-up with initial Web registration or with a first visit to the Web site.

CONTESTING RECORD PROCEDURES:

Individual beacon owners have access to their database file and have the ability to update or correct information. Other issues are addressed by the system manager who can be contacted at the above address.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained provides information to NOAA by either the website or mail. Existing registrations can be updated according to the above processes, by a phone call from the beacon owner, or by rescue coordination center controllers when updated information is collected while processing a case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 11, 2003.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. E8–8241 Filed 4–16–08; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 080404520–8522–01]

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of a new Privacy Act System of Records: COMMERCE/NOAA–19, Permits and Registrations for United States Federally Regulated Fisheries.

SUMMARY: This notice announces the Department of Commerce's (Department's) proposal for a new system of records under the Privacy Act. NOAA's National Marine Fisheries Service (NMFS) is creating a new system of records for permits and non-permit registrations for use with a variety of fisheries management programs. Information will be collected from individuals under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, the High Seas Fishing Compliance Act, the American Fisheries Act, the Tuna Conventions Act of 1950, the Atlantic Coastal Fisheries Cooperative Management Act, the Atlantic Tunas Convention Authorization Act, the Northern Pacific Halibut Act, the Antarctic Marine Living Resources Convention Act, International Fisheries Regulations regarding U.S. Vessels Fishing in Colombian Treaty Waters, and the Marine Mammal Protection Act. This new record system is necessary to identify participants in the fisheries and to evaluate the qualifications of the applicants.

DATES: To be considered, written comments must be submitted on or before May 19, 2008. Unless comments are received, the new system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

ADDRESSES: Comments may be mailed to: Ted Hawes, Team Leader, Northeast Permits Team, NOAA's National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Ted Hawes, Team Leader, Northeast Permits Team, NOAA's National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION: NMFS is creating a new system of records for permit and non-permit registrations for use with a variety of fisheries management programs. NMFS requires the use of permits or registrations by participants in U.S. federally regulated fisheries. Information collections would be requested from individuals under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, the High Seas Fishing Compliance Act, the American Fisheries Act, the Atlantic Coastal Fisheries Cooperative Management Act, the Tuna Conventions Act of 1950, the Atlantic Tunas Convention Authorization Act, the Northern Pacific Halibut Act, the Antarctic Marine Living Resources Convention Act, and the Marine Mammal Protection Act. The collection of information is necessary to identify participants in these fisheries and to evaluate the qualifications of the applicants. NMFS would collect information from individuals in order to issue, renew, or transfer fishing permits or to make non-permit registrations. The authority for the mandatory collection of the Tax Identification Number (Employer Identification Number or Social Security Number) is the Debt Collection Improvement Act, 31 U.S.C. 7701.

COMMERCE/NOAA–19

SYSTEM NAME:

Permits and Registrations for United States Federally Regulated Fisheries.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930 (includes Atlantic Highly Migratory Species (HMS) Tuna Dealer permits).

NMFS Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701 (includes Atlantic HMS International Trade Permit, shark and swordfish vessel permits, shark and swordfish dealer permits).

NMFS Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Bldg. #1, Seattle, WA 98115.

NMFS Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037 (Pacific Highly Migratory Species database only).

NMFS Pacific Islands Region, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

NMFS Alaska Region, 709 West Ninth Street, Juneau, AK 99802–1668.

NMFS Office of Science and Technology, 1315 East West Highway, 12th Floor, Silver Spring, MD 20910 (National Saltwater Angler Registry, High Seas Fishing Compliance Act, and Antarctic Marine Living Resources harvesting permit data).

NMFS Office of Sustainable Fisheries, P.O. Drawer 1207, Pascagoula, MS 39567 (Antarctic Marine Living Resources import permit data).

NMFS Office of Sustainable Fisheries, 1315 East West Highway, Room 13130, Silver Spring, MD 20910 (Atlantic HMS Tuna vessel permits, HMS Angling Permit, HMS Charter/headboat permits database).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners or holders of a permit or registration as recognized by NMFS, owner agents, vessel owners and/or operators. Individuals who apply for any permit, permit exception, permit exemption or regulation exemption, registration, dedicated access privilege or fishing quota share either initially, annually, or by transfer. Applicants seeking permission to fish in a manner that would otherwise be prohibited in order to conduct experimental fishing. Owners of processing facilities and/or fish dealers. Permit qualifiers (persons whose incomes are used for permit

qualification). Allocation assignees under a Southeast Region individual fishing quota.

CATEGORIES OF RECORDS IN THE SYSTEM:

THIS INFORMATION IS COLLECTED AND/OR MAINTAINED BY ALL REGIONS AND DIVISIONS:

Current permit number, permit status information, type of application, name of applicant and of other individuals on application (vessel owner(s), owner's agent, operator, dealer, corporation members), and position in company (if applicable), corporation name, date of incorporation and articles of incorporation (if applicable), date of birth, address, telephone numbers (business, cell and/or fax), U.S. Coast Guard Certificate of Documentation number or state vessel registration number and date of expiration, Vessel Monitoring System (VMS) activation certification, vessel name, vessel function, vessel characteristics (length, breadth, external markings, hull or superstructure color), gross and net tonnage, type of construction, fuel capacity and type, horsepower (engine, pump), type of product storage. The Tax Identification Number (TIN) (Employer Identification Number (EIN) or Social Security Number (SSN)) is required for all permits, under the authority of the Debt Collection Improvement Act (DCIA), 31 U.S.C. 7701. The primary purpose for requesting the TIN is for the collection and reporting on any delinquent amounts arising out of such person's relationship with the government pursuant to the DCIA.

It is required in subsection (c)(1) that each person doing business with NMFS is to furnish their taxpayer identifying number. For purposes of administering the various NMFS fisheries permit and registration programs, a person shall be considered to be doing business with a federal agency including but not limited to if the person is an applicant for, or recipient of, a federal license, permit, right-of-way, grant, or benefit payment administered by the agency or insurance administered by the agency pursuant to subsection (c)(2)(B) of the DCIA.

ADDITIONAL INFORMATION IS COLLECTED AND/OR MAINTAINED BY INDIVIDUAL REGIONS AND DIVISIONS:

Northeast Region

For transferable permits: Hair and eye color, height and weight, ID-sized photograph, medical records for resolution of permit dispute, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, credit card and/or checking account numbers, cancelled checks, tax returns, internal permit number specific to each limited entry permit, baseline specifications on limited entry permit, country, captain's license, State and Federal Dealer Numbers (if applicable), coast on which dealer does business, processing sector, facilities where fish received, vessel landing receipts and records, dealer purchase receipts, bills of sale, type of vessel registration, NMFS unique vessel ID, year vessel built, hailing port, hailing port state, principal port, principal state, vessel operations type (catching and/or processing: For at-sea processing permit), fish hold capacity, passenger capacity, VMS status, crew size, fishery type, fishery management plan and category, maximum days at sea, quota allocation and shares, regional fishery management organization, species or species code, type of gear, gear code and rank, buoy and trap/pot color, number of tags assigned to vessel, number of traps, dredge size and number.

Southeast Region

Fee payment information, business e-mail address, Web site, gender, hair and eye color, height and weight, ID-sized photograph, Dunn and Bradstreet Corporation Number, NMFS internal identification number, county, country, marriage certificate, divorce decree, death certificate, trust documents, probated will, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, name of vessel permit applicant if not owner, and relationship to owner, type of vessel ownership, captain's license, original permit, permit payment information, name of permit transferor and number of permit before transfer, permit and vessel sale price (for permit transfers), date of permit transfer signature, notarized sale and lease agreement with lease start and end dates if applicable, income or license qualifier for certain fisheries, Income Qualification Affidavit for income qualified fisheries, U.S. importer number, State and Federal Dealer Numbers (if applicable), plant name and operator, hull identification number, hailing port and hailing port state, year vessel built, location where vessel built, fish hold capacity, live well capacity, radio call sign, vessel communication types and numbers, crew size, passenger capacity, fishery type, quota shares, vessel landing receipts and records, bills of sale, processing facility where fish are received, gear type, species/gear endorsements, buoy/trap color code, number of traps, trap tag number series, trap dimensions, trap mesh size, designated fishing zone, aquaculture reports, site description, material deposited and harvested, value of material, Highly Migratory Species workshop certificate, informational telephone calls recorded with member of public's knowledge, for customer service evaluation and constituent statement records.

Atlantic Highly Migratory Species

Business e-mail, Web site, Dunn and Bradstreet Corporation Number, percent/rank of ownership interest, lease start/end date, income or license qualifier for certain fisheries, U.S. Importer Number (dealers), State and Federal Dealer Numbers (if applicable), processing facility where fish are received, type of vessel registration, hull identification number, passenger capacity, crew size, hailing port, hailing port state, principal port, principal port state, fish hold capacity, year vessel built, fishery type, species or species code, type of fishing gear, gear code.

Northwest Region

Fee payment information, business e-mail address, NMFS internal identification number, ownership rank if applicable, permit payment information, credit card and/or checking account numbers, canceled checks, tax returns, divorce decree, marriage certificate, city and state where married, death certificate, probated will, trust documents, medical records for emergency transfer of certain permits only, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, name of permit transferor and number of permit before transfer, period of permit lease, permit price, location where vessel built, fishery type, quota shares, species and gear endorsements, gear code, amount of landed fish or processed fish product, operation as mother ship with start and end date.

Southwest Region

Business e-mail address, applicant's name and relationship to owner or owner manager if not owner or operator, country, Dunn and Bradstreet Corporation Number, other federal, state and commercial licenses held by operator, name of permit transferor and number of permit before transfer, type of vessel (commercial fishing, charter), vessel photograph, hull identification number, hailing port, hailing port state, principal port, principal port state, year vessel built, where vessel built, maximum vessel speed, fish hold capacity, processing equipment, passenger capacity, crew size, international radio call sign, Vessel Monitoring System (VMS) status, dolphin safety gear on board, previous

vessel flag, previous vessel name and effective dates, species/gear endorsements, fishery type, type of fishing gear, gear code, fishing status (active or inactive), intent to make intentional purse seine sets on marine mammals, date, location, and provider of most recent tuna purse seine marine mammal skipper workshop.

Pacific Islands Region

Photograph identification, citizenship, credit card and/or checking account numbers, cancelled checks, owner of checking account from which permit fees paid, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, name of permit transferor and number of permit before transfer, International Maritime Organization number, NMFS vessel identification number, international radio call sign, year vessel built, location where vessel built, fishery type, percent of ownership interest, ownership and catch history as basis for exemption eligibility, days at sea allocations, quota shares, vessel landing receipts and records, dealer purchase receipts, bills of sale.

Alaska Region

Business e-mail address, country, NMFS internal identification number, citizenship, reference names, owner beneficiary, death certificate, marriage certificate, divorce decree, trust documents, probated will, medical information for emergency transfer of certain permits only, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, credit card and/or bank account numbers, canceled checks, tax returns, name of Alaska Native tribe, community of residence, fishery community organization, community governing body contact person, nonprofit name, community represented by nonprofit, cooperative representative, percent of ownership interest, permit restrictions, quota type, names of other quota holders if affiliated with any cooperative member receiving quota against cap, names and relationship of permit transferor and transferee, transfer eligibility certificate, sector and region before transfer, relationship of transferor and transferee, reason for transfer, broker's name and fee, lien information (if applicable), quota transfer costs, permit financing source, permit fee, sale/lease agreement, period of lease, agreement to return shares (if applicable), for crab rationalization: affidavit that right of first refusal contracts were signed, number of units and pounds of fish transferred, applicable dealer license numbers, processing plant name and identification, operation type and operator, type of vessel registration, State of Alaska registration number, NMFS vessel identification number, hull identification number, hailing port and hailing port state, numbers of existing permits if applicable to current application, documentation of loss or destruction of a vessel, list of vessels in a vessel cooperative, vessel operations type in terms of catching and/or processing, species/gear endorsements for fisheries requiring vessel monitoring systems, fishery type, species or species code, fishery management plan, days at sea allocations, quota shares, type of fishing gear, gear code, vessel landing receipts and records, bills of sale, delivery receipts, dealer purchase receipts, processing sector and facility where fish are received, statement from processor that there is a market for rockfish received from applicant for entry level harvester permit.

High Seas Fishing Compliance Act

Citizenship, internal identification number, percent/rank of ownership interest, hull identification number, vessel photograph, type of vessel registration, year vessel built, where vessel built, fish hold capacity, hailing port, hailing port state, crew size, international radio call sign, previous vessel flag, previous vessel name, fishery type, fishery management plan, regional fishery management organization, type of fishing gear, gear code.

Antarctic Marine Living Resources

Nationality, type of vessel (commercial fishing, charter), where vessel built, year vessel built, fish hold capacity, International Maritime Organization number (if issued), vessel communication types and serial numbers, details of tamper-proof VMS elements, ice classification, processing equipment, international radio call sign, foreign vessel flag, previous vessel flag, previous vessel name, permit number of supporting foreign vessel, crew size, species code, type of fishing gear, information on the known and anticipated impacts of bottom trawling gear on vulnerable marine ecosystems, and the products to be derived from an anticipated catch of krill.

National Saltwater Angler Registry Program

Name, TIN, address, telephone number, designation as owner or operator of for-hire vessel, vessel name and registration/documentation number and a statement of the region(s) in which the registrant fishes.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. (Magnuson-Stevens Act); High Seas Fishing Compliance Act of 1995, 16 U.S.C. 5501 et seq; International Fisheries Regulations: Vessels of the United States Fishing in Colombian Treaty Waters: 50 CFR 300.120; the American Fisheries Act, Title II, Public Law No. 105–277; the Atlantic Coastal Fisheries Cooperative Management Act of 1993, 16 U.S.C. 5101–5108, as amended 1996; the Tuna Conventions Act of 1950, 16 U.S.C. 951–961; the Atlantic Tunas Convention Authorization Act, 16 U.S.C., Chapter 16A; the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773 et seq. (Halibut Act), the Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431–2444; the Marine Mammal Protection Act, 16 U.S.C. 1361; and the Debt Collection Improvement Act, 31 U.S.C. 7701.

PURPOSE(S):

This information will allow NMFS to identify owners and holders of permits and non-permit registrations, identify vessel owners and operators, evaluate requests by applicants and current participants, or agency actions, related to the issuance, renewal, transfer, revocation, suspension or modification of a permit or registration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records may be disclosed as follows.

1. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute or contract, rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, rule, regulation, or order issued pursuant thereto, or protecting the interest of the Department.

2. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing

counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether the Freedom of Information Act (5 U.S.C. 552) requires disclosure thereof.

5. A record in this system will be disclosed to the Department of Treasury for the purpose of reporting and recouping delinquent debts owed the United States pursuant to the Debt Collection Improvement Act of 1996.

6. A record in this system may be disclosed to the Department of Homeland Security for the purpose of determining the admissibility of certain seafood imports into the United States.

7. A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

8. A record in this system of records may be disclosed to approved persons at the state or interstate level within the applicable Marine Fisheries Commission for the purpose of co-managing a fishery or for making determinations about eligibility for permits when state data are all or part of the basis for the permits.

9. A record in this system of records may be disclosed to the applicable Fishery Management Council (Council) staff and contractors tasked with the development of analyses to support Council decisions about Fishery Management Programs.

10. A record in this system of records may be disclosed to the applicable NMFS Observer Program for purpose of identifying current permit owners and vessels and making a random assignment of observers to vessels in a given fishing season.

11. A record in this system of records may be disclosed to the applicable Regional or International Fisheries Management Body for the purpose of identifying current permit owners and vessels pursuant to applicable statutes or regulations and/or conservation and management measures adopted by a Regional or International Fisheries Management Body, such as: the Food and Agriculture Organization of the United Nations, Commission for the Conservation of Antarctic Marine Living Resources, Inter-American Tropical Tuna Commission, International Pacific Halibut Commission, and International Commission for the Conservation of Atlantic Tunas.

12. A record in this system of records may be disclosed to appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized database; CDs; paper records stored in file folders in locked metal cabinets and/or locked rooms.

RETRIEVABILITY:

Records are organized and retrieved by NMFS internal identification number, name of entity, permit number, vessel name or identification number, or plant name. Records can be accessed by any file element or any combination thereof.

SAFEGUARDS:

The system of records is stored in a building with doors that are locked during and after business hours. Visitors to the facility must register with security guards and must be accompanied by federal personnel at all times. Records are stored in a locked room and/or a locked file cabinet. Electronic records containing Privacy Act information are protected by a user identification/password. The user identification/password is issued to individuals as authorized by authorized personnel.

All electronic information disseminated by NOAA adheres to the standards set out in Appendix III, Security of Automated Information Resources, OMB Circular A–130; the Computer Security Act (15 U.S.C. 278g–3 and 278g–4); and the Government Information Security Reform Act, Public Law 106–398; and follows NIST SP 800–18, Guide for Developing Security Plans for Federal Information Systems; NIST SP 800–26, Security Self-Assessment Guide for Information Technology Systems; and NIST SP 800–53, Recommended Security Controls for Federal Information Systems.

RETENTION AND DISPOSAL:

All records are retained and disposed of in accordance with National Archive and Records Administration regulations (36 CFR Chapter XII, Subchapter B—Records Management); Departmental directives and comprehensive records schedules; NOAA Administrative Order 205–01; and the NMFS Records Disposition Schedule, Chapter 1500.

SYSTEM MANAGER(S) AND ADDRESSES:

Division Chief, Fisheries Statistics Office, NMFS Northeast Region, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Assistant Regional Administrator for Operations, Management, and Information Services, NMFS Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701.

Permit Team Leader, NMFS Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Bldg. #1, Seattle, WA 98115.

Assistant Regional Administrator and Tuna Dolphin Policy Analyst, NMFS Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Information/Permit Specialist, Sustainable Fisheries Division, NMFS Pacific Islands Region, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

Regional Administrator, NMFS Alaska Region, 709 West Ninth Street, Juneau, AK 99801.

High Seas Fishing Compliance Act: Fishery Management Specialist, Office of International Affairs (F/IA), NMFS, 1315 East-West Highway, Room 12604, Silver Spring, MD 20910.

AMLR harvesting permits: Foreign Affairs Specialist for International Science, NMFS Office of Science and Technology, 1315 East-West Highway, Room 12350, Silver Spring, MD 20910.

AMLR dealer permits: Import Control Officer, NMFS Office of Sustainable

Fisheries, P.O. Drawer 1207, Pascagoula, MS 39567.

National Saltwater Angler Registry: Fish Biologist, Office of Science and Technology, Fisheries Statistics Division NMFS, 1315 East-West Highway, Room 12423, Silver Spring, MD 20910.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the national or regional Privacy Act Officer:

Privacy Act Officer, NOAA, 1315 East-West Highway, Room 10641, Silver Spring, MD 20910.

Privacy Act Officer, NMFS, 1315 East-West Highway, Room 13706, Silver Spring, MD 20910.

Privacy Act Officer, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Privacy Act Officer, NMFS Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701.

Privacy Act Officer, NMFS Northwest Region, 7600 Sand Point Way NE., Bldg. #1, Seattle, WA 98115.

Privacy Act Officer, NMFS Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Privacy Act Officer, NMFS Pacific Islands Region, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

Privacy Act Officer, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK 99801.

Written requests must be signed by the requesting individual. Requestor must make the request in writing and provide his/her name, address, and date of the request and record sought. All such requests must comply with the inquiry provisions of the Department's Privacy Act rules which appear at 15 CFR part 4, Appendix A.

RECORD ACCESS PROCEDURES:

Requests for access to records maintained in this system of records should be addressed to the same address given in the Notification section above. **Note:** Complete records for jointly owned permits are made accessible to each owner upon his/her request.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned are provided for in 15 CFR part 4, Appendix A.

RECORD SOURCE CATEGORIES:

Information in this system will be collected from individuals applying for a permit or registration or from an entity supplying related documentation regarding an application, permit, or registration.

EXEMPTION CLAIMS FOR SYSTEM:

None.

Dated: April 11, 2008.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. E8–8257 Filed 4–16–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH25

Taking and Importing Marine Mammals; Navy Training and Research, Development, Testing, and Evaluation Activities Conducted Within the Southern California Range Complex

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to military readiness training events and research, development, testing and evaluation (RDT&E) to be conducted in the Southern California Range Complex (SOCAL) for the period beginning January 2009 and ending January 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than May 19, 2008.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.050107L@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext. 166.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by writing to the address specified above (See **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The Navy's Draft Environmental Impact Statement (DEIS) for SOCAL was made available to the public on April 4, 2008, and may be viewed at *http://www.socalrangecomplexeis.com/*. Because NMFS is participating as a cooperating agency in the development of the Navy's DEIS for SOCAL, NMFS staff will be present at the associated public meetings and prepared to discuss NMFS' participation in the development of the EIS as well as the MMPA process for the issuance of incidental take authorizations. The dates and times of the public meetings may be viewed at: *http://www.socalrangecomplexeis.com/*.

Background

In the case of military readiness activities, sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely

affect the species or stock through effects on annual rates of recruitment or survival.

With respect to military readiness activities, the MMPA defines ''harassment'' as:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On March 31, 2008, NMFS received an application from the Navy requesting authorization for the take of 24 species of marine mammals (4 pinniped and 20 cetacean) incidental to upcoming training activities to be conducted off the coast of southern California and farther off the coast of northern Mexico (in SOCAL) over the course of 5 years. These training activities are classified as military readiness activities. The Navy states that these training activities may expose some of the marine mammals present in the area to sound from various mid-frequency and high-frequency active tactical sonar sources or to pressure from underwater detonations. The Navy requests authorization to take individuals of 24 species of marine mammals by Level B Harassment. Further, the Navy requests authorization to take 10 individual beaked whales over the course of 5 years by serious injury or mortality.

Specified Activities

In the application submitted to NMFS, the Navy requests authorization to take marine mammals incidental to conducting operations utilizing mid- and high frequency active sonar sources and explosive detonations. These sonar and explosive sources will be utilized during Naval Surface Fire Support Exercises, Bombing Exercsises, Sink Exercises, Antisubmarine Warfare (ASW) Tracking Exercises, ASW Torpedo Exercises, Major Integrated ASW Training Exercises, and Mine Neutralization Exercises. Table 1–1 in the application lists the activity types, the equipment and platforms involved, and the duration and potential locations of the activities.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). All information, suggestions, and comments related to the Navy's SOCAL request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by the Navy's SOCAL activities will be considered by NMFS in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: April 10, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–8283 Filed 4–16–08; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Understanding the Pending Lead Legislation and the Use of Lead in Consumer Products; Notice of Roundtable To Be Held by CPSC Staff

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of roundtable to be held by Consumer Product Safety (Commission or CPSC) staff.

SUMMARY: On May 13, 2008, the staff of the Consumer Product Safety Commission (Commission or CPSC) will hold a one-day roundtable on understanding the pending lead legislation and the use of lead in consumer products.

DATES: The roundtable will be held on May 13, 2008, from 8 a.m.–4 p.m. at the Consumer Product Safety Commission.

ADDRESSES: The roundtable will be held in Room 420, CPSC's Hearing Room of the East West Towers Building, 4330 East West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Lori Saltzman, Director, Division of Health Sciences, telephone (301) 504–7238, e-mail *lsaltzman@cpsc.gov;* or Kris Hatlelid, telephone (301) 504–7254, e-mail *khatlelid@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The staff is holding a one-day roundtable, ''Understanding the Pending Lead Legislation and the Use of Lead in Consumer Products.'' This roundtable is intended to provide stakeholders with an understanding of the pending Congressional action on lead and the use of lead in consumer products, especially children's products.

CPSC staff will discuss pending lead legislation and enforcement issues, current events abroad, and laboratory testing procedures for lead. Industry representatives will discuss the use of lead in consumer products (for example, paints and coatings, toys, plastics, jewelry, electronics, batteries and textiles), potential substitutes for lead in their products, best practices that can be implemented to eliminate or reduce the use of lead, and differences between domestic manufacturing plants and their practices and those outside the U.S. The roundtable will include question and answer sessions and discussions led by the CPSC staff. A wrap-up session for final comments and questions and answers will conclude the day.

The roundtable is a public event open to anyone interested in lead issues. Although pre-registration is not mandatory, CPSC staff request that attendees pre-register online at *http://www.cpsc.gov/cgibin/lead.aspx.* For a hard copy of the registration form, contact Todd Stevenson, telephone 301–504–6836, e-mail *tstevenson@cpsc.gov.*

Dated: April 11, 2008.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E8–8285 Filed 4–16–08; 8:45 am]

BILLING CODE 6355–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice of Public Meeting Roundtable Discussion.

DATE AND TIME: Thursday, April 24, 2008, 9 a.m.–2 p.m. (EST).

PLACE: United States Election Assistance Commission, 1225 New York Ave., NW., Suite 150, Washington, DC 20005.

AGENDA: The Commission will host a voting advocates roundtable discussion of the Technical Guidelines Committee's (TGDC) recommended Voluntary Voting System Guidelines. The discussion will be focused upon the following topics: (1) The development of a threat assessment; (2) The evaluation of innovative systems; (3) Open Ended Vulnerability Testing (OEVT) and how it fits into the proposed standards; (4) The testing of voting system software; (5) How best to strike the balance between usability and accessibility and the need for secure systems; (6) Possible changes in scope or depth that would help improve the proposed standard.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Matthew Masterson, Telephone: (202) 566–3100.

Caroline C. Hunter,

Vice-Chair, U.S. Election Assistance Commission.

[FR Doc. E8–8287 Filed 4–16–08; 8:45 am]

BILLING CODE 6820–KF–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice of Public Meeting Roundtable Discussion.

DATE AND TIME: Friday, April 25, 2008, 9 a.m.–2 p.m. (EST).

PLACE: United States Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005.

AGENDA: The Commission will host an election official roundtable discussion of the Technical Guidelines Committee's (TGDC) recommended Voluntary Voting System Guidelines. The discussion will be focused upon the following topics: (1) The usability and readability of the proposed standards; (2) The creation of a risk assessment for voting systems; (3) Stability of the standards vs. the need to create flexible standards that promote innovation; (4) Open Ended Vulnerability Testing (OEVT) and how it fits into the proposed standards; (5) The possible value of the testing of individual components to state and local jurisdictions; (6) Possible changes in scope or depth that would help improve the proposed standard.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Matthew Masterson, Telephone: (202) 566–3100.

Caroline C. Hunter,

Vice-Chair, U.S. Election Assistance Commission.

[FR Doc. E8–8289 Filed 4–16–08; 8:45 am]

BILLING CODE 6820–KF–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0038; FRL–8555–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Requirements for Control Technology Determinations From Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j); EPA ICR No. 1648.06, OMB Control No. 2060–0266

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew a lapsed approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 19, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2002–0038 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rick Colyer, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policy and Programs Division, Program Design Group, D205–02, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5262, e-mail *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 2, 2007 (72 FR 62226) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 6 comment letters during the comment period, which are addressed in the ICR Supporting Statement. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2002–0038, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Information Collection Request for Requirements for Control Technology Determinations From Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j).

ICR numbers: EPA ICR No. 1648.06, OMB Control No. 2060–0266.

ICR status: The previous ICR expired on May 31, 2005. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The regulations governing section 112(j) case-by-case MACT determinations were promulgated on May 20, 1994 (59 FR 26449), and amended last on May 30, 2003 (68 FR 32586).

The affected entities of this ICR are major sources of polyvinyl chloride and copolymers production; brick and structural clay products manufacturing; clay ceramics manufacturing; and industrial, commercial, and institutional boilers and process heaters. Previous MACT standards for these source categories have been vacated by the U.S. Court of Appeals for the District of Columbia Circuit. Sources previously subject or would have been subject to those MACT standards would be those entities affected by this ICR.

Owners and operators of affected sources must submit title V permit applications or amendments to establish case-by-case MACT terms and conditions. We anticipate that this ICR will cover any activities involving preparing, submitting, and reviewing the Parts 1 and 2 permit applications and applicability determinations, developing the title V permit terms and conditions, and the permit review and approval process.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 92.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Respondents include owners/operators of major sources of hazardous air pollutants (HAPs) in the following source categories: polyvinyl chloride and copolymers production, brick and structural clay products manufacturing, clay ceramics manufacturing, and industrial, commercial, and institutional boilers and process heaters.

Estimated Number of Respondents: 2,573.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 151,730.

Estimated Total Annual Cost: $9,995,666.

Changes in the Estimates: There is a decrease of 20,470 hours in the total estimated burden previously identified in the expired ICR in the OMB Inventory of Approved ICR Burdens.

The ICR 1648.04 spanned the period in which the section 112(j) rule would have applied to any of the 59 source categories covered by the 2000 MACT standards (the 10-year bin). This ICR would affect only the 4 source categories covered by the MACT standards that have been vacated by the United States Court of Appeals for the District of Columbia Circuit. Unlike ICR No. 1648.04, which estimated the burden from the Part 1 application only (because all the MACT standards were promulgated before Part 2 applied), this ICR estimates burden for preparing, submitting, and reviewing the Parts 1 and 2 permit applications and applicability determinations, developing the title V permit terms and conditions, and the permit review and approval process.

This ICR also estimates the number of responses on a facility basis instead of an individual boiler basis as the previous ICR did, because each facility will submit one application for the facility, not each boiler.

Finally, EPA has updated the labor rates for respondents, State, Local, and Tribal agencies, and the EPA. These adjustments were made to more accurately reflect the true cost of an hour of labor for the respondents, State, Local, and Tribal agencies, and the EPA. The unloaded hourly rates are different because they are based on the latest available rates from the BLS and the OPM.

In summary, the difference in the burden estimate is due to the adjustments discussed above, including number of respondents, submittal of permit applications, development of the permit, and updated labor rates.

Dated: April 11, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–8330 Filed 4–16–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0317; FRL–8361–7]

Security and Prosperity Partnership; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will be holding a public meeting to encourage input from stakeholders regarding approaches to ensuring success in meeting 2012 Security and Prosperity Partnership (SPP) goals to assess and initiate action, if necessary, on thousands of high (HPV) and moderate production volume (MPV) chemicals, to engage stakeholders on the concept of developing and implementing a HPV Challenge-type program for ''inorganic'' HPV chemicals, and on options for means to potentially reset the Toxic Substances Control Act (TSCA) Inventory. Additional information on these Chemical Assessment and Management Program (ChAMP) efforts can be found on the Office of Pollution Prevention and Toxics homepage, *http://www.epa.gov/oppt*, and on the new ChAMP website, *http://www.epa.gov/champ*. The purpose of this public meeting will be to further discussion and development of these initiatives.

DATES: The meeting will be held on May 2, 2008, from 1:30 p.m. to 4:30 p.m.

Requests to participate in the meeting must be received on or before April 28, 2008.

To request accommodation of a disability, please contact the technical person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held in the EPA East, Conference Room 1153, 1201 Constitution Ave., NW., Washington, DC.

Requests to participate in the meeting and requests for accommodation of a disability, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0317, may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Pam Buster, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8817; e-mail address: *buster.pamela@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use chemical substances subject to TSCA. Potentially affected entities may include, but are not limited to chemical manufacturers, e.g., persons manufacturing, importing, processing, or using chemicals for commercial purposes. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may have an interest in this matter. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPPT–2008–0317. All documents in the docket are listed in the docket's index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What are SPP and ChAMP?

SPP unites the efforts of Canada, Mexico, and the United States in an initiative that is committed to accelerating and strengthening the national and regional risk-based assessment and management of chemicals. This effort is pursuant to a commitment made by President Bush, Canadian Prime Minister Stephen Harper, and Mexican President Felipe Calderon in Montebello, Quebec, in August 2007. SPP builds on current work underway in the United States and Canada and will complement North American efforts under the Commission on Environmental Cooperation's Sound Management of Chemicals project.

The SPP initiative includes a number of regional and national commitments. The partners will share scientific information, technical understanding, best practices, and risk management approaches, and will better coordinate research on new approaches to chemical testing and assessment. When EPA announced the SPP commitment, it stated its intention to obtain stakeholder input and the public meeting meets that goal in part. ChAMP is the name given by EPA to its efforts to meet the SPP commitment to complete initial assessments and take action, if necessary, on thousands of chemicals produced above 25,000 lbs/year. This commitment includes both HPV and MPV chemicals, builds on the U.S. HPV Challenge Program and Canada's work on chemical categorization and may also include two new initiatives discussed below.

B. What Action is the Agency Taking?

In accordance with U.S. SPP commitments, by 2012, EPA under ChAMP will assess and initiate action, if necessary, on the over 6,750 existing chemicals produced above 25,000 lbs/year in this country. These efforts will position the United States to take action to ensure that these chemicals are produced and used in ways that do not present unacceptable risks to health and the environment. The approximately 6,750 chemicals encompassed by the SPP commitment and ChAMP include 2,750 organic HPV chemicals produced at or above 1 million lbs/year. In assessing these chemicals, the Agency will prepare screening-level characterizations of hazard, exposure, and risk, and will use those characterizations to develop an initial risk-based prioritization (RBP). HPV Challenge submissions will generally provide the base hazard data used in the hazard characterizations, while the 2006 Inventory Update Reporting (IUR) will provide the bulk of the use and exposure information used in the exposure characterizations. These screening-level hazard and exposure characterizations will be combined to develop screening-level risk characterizations, which summarize EPA's current thinking regarding the potential risks of HPV chemicals or categories. Together, these characterization documents will support an initial RBP identifying the relative priorities of these chemicals and informing risk management options. More detail on the RBP process, including characterization and prioritization documents, can be found at *http://www.epa.gov/CHAMP* by following the RBP links.

In addition to the 2,750 organic HPV chemicals, the United States committed under SPP to assess and initiate action, if necessary, on an additional 4,000 organic MPV chemicals. MPV chemicals are produced at or greater than 25,000 lbs/year but at less than 1 million lbs/year. The Agency generally does not have the same degree of hazard and exposure data on these chemicals, therefore, the assessment scheme will differ from that applied to the HPV chemicals. For MPV chemicals, EPA intends to develop health and environmental hazard and environmental fate characterizations using available data, Canadian categorization results, EPA Structure Activity Relationship (SAR) analysis input, and knowledge gained under the HPV Challenge Program, including on categories of chemicals. The hazard and fate characterizations will be used to support development of hazard based prioritizations to identify MPV chemicals that may need follow-up (e.g., hazard/fate testing, exposure information, risk management, etc.). As with HPV chemicals, the Agency envisions employing both voluntary and regulatory actions for MPV chemicals.

As mentioned in this unit, ChAMP may include two new initiatives identified by EPA. The first of these concerns approximately 750 inorganic HPV chemicals, which were first reported under the 2006 IUR cycle. Recognizing the value of the original HPV Challenge Program published in the **Federal Register** issue of December 26, 2000 (65 FR 81686) (FRL–6754–6) in making available to EPA and the public basic screening level data on many organic HPV chemicals, EPA believes there is value in extending the approach to inorganic HPV chemicals. Several domestic and international activities provide a starting point for development of an Inorganics High Production

Volume (IHPV) Challenge Program in the near future. The Agency is considering applying the general approach used in the HPV Challenge Program (sponsorship commitments, development of test plans, public review step, completion of data package, and submission to EPA) as well as the inorganics guidance developed by the Organization for Economic Cooperation and Development (OECD) for use in its HPV Program. Additional information on OECD's guidance on inorganics can be found at: *http://www.oecd.org/document/7/0,3343,en_2649_34379_1947463_1_1_1_1,00.html*.

It is anticipated that an IHPV Challenge Program, if started in 2008, could be completed by approximately 2011–2012. The 2011 IUR reporting cycle will include exposure/use data for inorganic HPV chemicals which would allow for EPA to consider both hazard and exposure elements and develop RBPs for these chemicals. An assessment approach similar to that for organic MPV chemicals could be applied to inorganic medium production volume (IMPV) chemicals at a later date.

The second new initiative concerns an effort to potentially ''reset'' the TSCA Inventory. The original TSCA Inventory was compiled in 1979 consisting of 62,000 chemicals. Since then approximately 21,000 new chemicals have been added to the TSCA Inventory. Under TSCA section 8(b), EPA is required to ''compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States.'' Pursuant to this authority, and in an effort to better understand the universe of chemicals actually in commerce at present, EPA is considering an effort to reset the TSCA Inventory. While there are a number of issues and questions that would need to be resolved if EPA does move forward with this effort it necessarily will need to obtain information on currently manufactured and/or imported chemicals. Additional information on ChAMP and EPA's current thinking can be found at: *http://www.epa.gov/CHAMP*.

C. Why is EPA Taking This Action?

EPA believes that ChAMP provides a sound basis for realizing further progress by EPA on assessing and managing chemicals. The SPP effort has great potential to achieve greater public health and environmental protection by promoting a more integrated approach to chemicals assessment and management in North America. By sharing information and the assessment burden North America will be able to more quickly, efficiently, and cost-effectively determine the need for, and possibly take, risk management actions on a greater number of chemicals. Work done by the U.S. to meet its 2012 SPP commitment represents an important contribution to this effort and to meeting U.S. domestic chemical assessment and management needs. The two new initiatives being considered complement and strengthen ChAMP by expanding EPA's efforts to include inorganic HPV chemicals and an effort focused on resetting the TSCA Inventory.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPPT–2008–0317, must be received on or before April 28, 2008.

List of Subjects

Environmental protection, Chemicals, European Union, Hazardous chemicals, High Production Volume (HPV) chemicals, Medium Production Volume (MPV) chemicals, TSCA Inventory.

Dated: April 11, 2008.

Wendy C. Hamnett,

Acting Director, Office Pollution Prevention and Toxics.

[FR Doc. E8–8329 Filed 4–16–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8555–3]

Public Water System Supervision Program Revision for the State of Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval.

SUMMARY: Notice is hereby given that the State of Arkansas is revising its approved Public Water System Supervision Program. Arkansas has adopted the Stage 2 Disinfectant and Disinfection Byproducts Rule (DDBPR) to increase public health protection by reducing the potential risk of adverse health effects associated with disinfection byproducts throughout the distribution system. In addition, the State of Arkansas has adopted the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) to improve public health protection through the control of microbial contaminants by focusing on systems with elevated Cryptosporidium risk. EPA has determined that the proposed Stage 2 DDBPR and LT2ESWTR revisions submitted by Arkansas are no less stringent than the corresponding federal regulations. Therefore, EPA proposes to approve these program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by May 19, 2008 to the Regional Administrator at the EPA Region 6 address shown below. Requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by May 19, 2008, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on May 19, 2008. Any request for a public hearing shall include the following information: the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Arkansas Department of Health, Division of Engineering, 4815 West Markham, Little Rock, Arkansas 72205; and the EPA Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Amy Camacho, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–7175, or *camacho.amy@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: April 10, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–8331 Filed 4–16–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

April 11, 2008.

FCC Announces April Open Meeting on Broadband Network Management Practices at Stanford University

The Federal Communications Commission (FCC) today announced that its April Open Meeting will be a public *En Banc* hearing to be hosted by Stanford Law School's Center for Internet and Society (CIS) at Stanford University in Palo Alto, California on Thursday, April 17, 2008.

The hearing information is as follows:

DATE: April 17, 2008.

TIME: 12 Noon (Pacific).

LOCATION: Dinkelspiel Auditorium, 471 Lagunita Drive, Stanford University, Palo Alto, California.

MAPS/DIRECTIONS: *http://campus-map.stanford.edu/index.cfm?ID=02-200 http://music.stanford.edu/Events/directions.html.*

Agenda

12 p.m.
Welcome/Opening Remarks
12:45 p.m.
Panel Discussion 1—Network Management and Consumer Expectations
2:15 p.m.
Break
3 p.m.
Panel Discussion 2—Consumer Access to Emerging Internet Technologies and Applications
4:30 p.m.
Public Comment
6:30 p.m.
Closing Remarks
7 p.m.
Adjournment

The Commission will hear from expert panelists regarding broadband network management practices and Internet-related issues. The hearing scheduled at Stanford University is the second such hearing on broadband network management practices and Internet-related issues to be held by the FCC and follows a similar hearing held at Harvard Law School last month (for more information: *http://www.fcc.gov/headlines.html*—go to February 25, 2008 headline: 'FCC *En Banc* Hearing on Broadband Network Management Practices, Cambridge, Massachusetts'). The hearing at Stanford University is open to the public, and seating will be available on a first-come, first-served basis. Additional details on this hearing will be forthcoming.

The public may file comments or other documents with the Commission and should reference docket numbers 07–52 and 08–7 when filing by paper or submit your filing electronically by going to *http://gullfoss2.fcc.gov/prod/ecfs/upload_v2.cgi* and enter proceeding numbers 07–52 and 08–7. Electronic filers need to complete cover forms separately for each docket because the system accepts only one docket number per filing. Filing instructions are provided at *http://www.fcc.gov/cgb/ecfs/.*

Sign language interpreters and open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation needed, and include a way we can contact you if we need more information. Please make your request as early as possible. Last minute requests will be accepted, but may be impossible to fill. You may send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (Voice), 202–418–0432 (TTY).

For additional information about the hearing, please visit the FCC's Web site at *http://www.fcc.gov.* Press inquiries should be directed to Robert Kenny at 202–418–2668 or Clyde Ensslin at 202–418–0506.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–8306 Filed 4–16–08; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FMR 2008–B2]

Real Property Federal Asset Sales

AGENCY: General Services Administration.

ACTION: Notice of Bulletin.

SUMMARY: In 2001, the President's Management Council selected the Federal Asset Sales (eFAS) initiative as one of the President's Electronic Government initiatives. The eFAS initiative is designed to make it easier for citizens and businesses to locate available Government assets, both real and personal, from a single portal location. The attached Bulletin provides instructions to Federal agencies on the advertising and reporting of sales of Federally-owned real property in accordance with the eFAS initiative. The General Services Administration will be publishing the posting and reporting requirements described in the Bulletin in an amendment to the Federal Management Regulation shortly.

EFFECTIVE DATE: April 17, 2008.

FOR FURTHER INFORMATION CONTACT: Stanley Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, on 202–501–1737, or by sending an e-mail message to *stanley.langfeld@gsa.gov.*

Dated: April 9, 2008.

Kevin Messner,

Acting Associate Administrator, Office of Governmentwide Policy.

Real Property

TO: Heads of Federal agencies
SUBJECT: Real Property Federal Asset Sales

1. Purpose. This Bulletin provides general information to Federal agencies concerning the sale of Federally-owned real property in accordance with the Federal Asset Sales (eFAS) initiative, one of the President's Electronic Government (E–Gov) initiatives. It contains instructions requiring Federal agencies to utilize the Federal Asset Sales portal (GovSales.gov) when advertising surplus real property and provides instructions to Federal agencies for reporting sales of real property.

2. Expiration. This Bulletin contains information of a continuing nature and will remain in effect until canceled.

3. Background. Each year, the Federal Government disposes of real and personal property. In 2001, the President's Management Council selected the eFAS initiative as one of the President's E–Gov initiatives. Prior to 2001, Federal agencies used multiple methods to market excess property, making it difficult for the public to locate and buy surplus Federal assets. This initiative strives to simplify locating government assets for sale, and to improve the promotion of Government sales through a centralized, citizen-centric web portal solution. The vision of the eFAS portal solution is to create a secure, efficient and effective online single-point of entry for the public to seek Federally-owned real and personal property assets available for sale.

In September 2005, representatives from the Department of Agriculture (USDA), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA), and the General Services Administration's (GSA) Public Buildings Service developed and launched the Real Property Asset Listing Portal, a web-based entry point designed to facilitate the sale of surplus Government real property assets. In October 2006, the GovSales.gov website was launched as part of the eFAS Presidential E–Gov initiative.

The Real Property Asset Listing Portal is now integrated with GovSales.gov and enables any Federal agency to advertise, in one place, its entire inventory of surplus, forfeited and foreclosed real property available for sale. The website provides the public with one location where specific types of real property (*i.e.*, houses, buildings and land, and farms) offered for sale by Federal agencies can be found. In addition, the team engaged other Federal agencies that are authorized to dispose of real property to list their surplus property for sale on the portal. In September 2007, the Department of Justice, the Department of State and the Department of the Treasury also began posting forfeited real property on the portal.

4. Real Property eFAS Initiative—Roles and Responsibilities. There are three main groups of Federal participants associated with eFAS. The responsibilities of each are described below.

(a) *eFAS Planning Office.* This is the main coordinating body of the eFAS initiative. The Planning Office works with the initiative's governing body, the Executive Steering Committee, and its subgroups, the Personal Property Subcommittee, the Real Property Subcommittee, the Configuration Control Board, the Sales Agency Working Group, and the Communications Working Group. The Planning Office also serves as a central data aggregation point for the entire initiative, and is the primary communication mechanism with the Office of Management and Budget.

(b) *Portal Sponsors.* The four Portal Sponsor agencies and the areas of the portal that they support are:

- HUD—Homes, buildings and land;
- VA—Homes;
- USDA—Farms; and
- GSA—Homes, buildings and land.

These agencies contribute to the operation of the Portal and provide hosting, listing and support services to facilitate the efficient operation of the portal.

(c) *Agencies.*

(1) *Posting on GovSales.gov.* The four Portal Sponsors listed in subsection 4(b), above, began listing properties on the GovSales.gov website during FY 2007. The remaining President's Management Scorecard Agencies with real property disposal authority began listing properties for sale on the portal in the 4th Quarter of FY 2007.

(2) *Reporting Requirements.* The Portal Sponsors began reporting sales data and metrics for the 3rd Quarter of FY 2007 sixty (60) days after the end of that quarter (September 1, 2007). The remaining President's Management Scorecard Agencies began reporting sales data and metrics quarterly for the 4th Quarter of FY 2007 sixty (60) days after the end of that quarter (December 1, 2007). It is important to note that an agency is required to report its real property sales even if the property is sold on its behalf by GSA. When GSA sells property on behalf of another agency, GSA will provide information about that sale to that agency, so that the agency can meet its reporting requirements.

5. Posting and Reporting Instructions

(a) *Posting.* Posting of real property to the eFAS portal is done through the Real Property Asset Listing Portal, a web-based portal that is integrated with the eFAS Sales Portal through GovSales.gov. The Listing Portal, while operated by USDA, one of the Portal Sponsors, provides for the posting of all types of real property: houses, buildings and land, and farms. GSA will post property to the portal that it sells on behalf of itself or other agencies.

Posting instructions are contained in the *Property Admin Web Application User Guide,* which can be accessed from GSA's *website at www.gsa.gov/govsales.* The required data elements will vary depending on the type of property being advertised. Access to the USDA Listing Portal is provided at *https://propertyadmin.sc.egov.usda.gov.* Instructions for establishing user authentication (ID and password) and creating an agency account are provided through the website.

(b) *Reporting.* Reporting will be done Quarterly, by Fiscal Year. The Planning Office will be making a Quarterly data call to each of the President's Management Scorecard Agencies. Agencies will report the required sales performance information by submitting it to *FASPlanningOffice@gsa.gov.* The Quarterly reports will be submitted using an Excel-based template provided by the Planning Office during the data call. The reports will provide the following information on a Quarterly basis:

- Total number of agency real property assets sold;
- Total number of real property assets posted to the eFAS Portal;
- Total gross real property sales revenue;
- Percentage of real property assets sold equal to or greater than the Government's estimated fair market value;
- Cycle time; and
- Total net sales revenue.

6. Additional Information

Further information regarding this Bulletin may be obtained by sending an e-mail message to *EFASPlanningOffice@gsa.gov.* GSA will be publishing the posting and reporting requirements described in this Bulletin in an amendment to the Federal Management Regulation shortly.

Dated: April 9, 2008.

Kevin Messner,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. E8–8312 Filed 4–16–08; 8:45 am]

BILLING CODE 6820–RH–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Genetics, Health, and Society

AGENCY: Office of the Secretary, HHS.

ACTION: Request for suggestions on new SACGHS priority issues.

SUMMARY: The Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS) is updating its study priorities. SACGHS requests suggestions on possible new topics for the Committee to address.

DATES: Written or electronic comments should be submitted by May 16, 2008.

ADDRESSES: Comments can be sent by mail to the following address: Secretary's Advisory Committee on Genetics, Health, and Society, attn: Suzanne Goodwin, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Comments also can be sent via e-mail to Suzanne Goodwin at *goodwins@od.nih.gov* or via facsimile to 301–496–9839.

FOR FURTHER INFORMATION CONTACT: Suzanne Goodwin, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838, *goodwins@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) established SACGHS to serve as a public forum for deliberations on the broad range of policy issues raised by the development and use of genetic technologies and, as warranted, to provide advice on these issues to the HHS Secretary or other Federal entities as requested. The scope of the Committee's charge includes assessing how genetic and genomic technologies are being integrated into health care and public health; studying the clinical, public health, ethical, economic, legal, and societal implications of genetic and genomic technologies and applications; identifying opportunities and gaps in research and data collection and analysis efforts; examining the impact of current patent policy and licensing practices on access to genetic and genomic technologies; analyzing uses of genetic information in education, employment, insurance, and law; and serving as a public forum for discussion of issues raised by genetic and genomic technologies. For more information about the Committee, please visit its Web site: *http://www4.od.nih.gov/oba/sacghs.htm.*

In March 2004, SACGHS identified 11 issues relating to its charge and developed a report that classified the relative priority of these issues (the report is available at *http://www4.od.nih.gov/oba/sacghs/reports/SACGHSPriorities.pdf*). The Committee has produced several work products related to these 11 issues, and other projects are near completion or underway:

1. *Coverage and reimbursement of genetic technologies.* SACGHS issued a report, *Coverage and Reimbursement of Genetic Tests and Services,* in February 2006. The report describes the current

state of coverage and reimbursement of genetic tests and services, highlights concerns that affect patient access to tests and services, and identifies nine steps that HHS and the private sector could take to help improve access to and appropriate utilization of health-related genetic tests and services.

2. *Large population studies.* In March 2007, SACGHS issued a report, *Policy Issues Associated with Undertaking a Large U.S. Population Cohort Project on Genes, Environment, and Disease.* The report delineates the questions that need to be addressed for policymakers to determine whether the U.S. Government should undertake a large population project to elucidate the influence of genetic variation and environmental factors on common, complex diseases.

3. *Genetic discrimination.* SACGHS has written three letters to the HHS Secretary championing the enactment of Federal legislation to prohibit discrimination based on genetic information by health insurers and employers. The Committee also provided the Secretary with a legal analysis of the adequacy of current law regarding genetic discrimination, a compendium of public comments documenting public fears and concerns about genetic discrimination, and a 10-minute DVD of testimonies received from the public.

4. *Genetics education and training of health professionals.* SACGHS issued a resolution that urged the HHS Secretary to take a series of steps to ensure the adequacy of genetics education and training of health care and public health professionals. Because of continuing needs in this area, SACGHS created a Genetics Education and Training Task Force in November 2007 to develop a plan to identify the education and training needs of health professionals, lay health educators, and the general public; outline the steps required to meet these needs; and evaluate the effectiveness of existing educational and training efforts.

5. *Direct-to-consumer marketing of genetic technologies.* SACGHS wrote two letters to the HHS Secretary urging greater collaboration among Federal agencies in addressing the advertising of laboratory-developed genetic tests. These efforts led to the issuance of a Federal Trade Commission Consumer Alert that cautions consumers that at-home genetic tests have not been evaluated by FDA and urges them to be wary of the claims made by companies marketing such tests.

6. *Oversight of genetic technologies.* In March 2007, the Office of the HHS Secretary charged SACGHS with identifying the steps needed for evidence development and oversight of genetic and genomic tests. A final report on the issue is expected in May 2008.

7. *Pharmacogenomics.* In May 2008, SACGHS will issue its final report on the opportunities and challenges associated with pharmacogenomics research, development of pharmacogenomic applications, and integration of these applications into clinical practice and public health.

8. *Patents and access.* SACGHS is currently studying the positive and negative effects of gene patent and licensing practices on patient access to genetic tests and the public's health. A final report is expected in 2009.

9. *Access to genetic technologies.* This was designated as an overarching issue that cuts across all SACGHS work.

10. *Public awareness and understanding of genetic technologies.* This was designated as an overarching issue that cuts across all SACGHS work.

11. *Genetic exceptionalism.* This was designated as an overarching issue that cuts across all SACGHS work.

SACGHS's work products can be found at: *http://www4.od.nih.gov/oba/sacghs/reports/reports.html.*

As described above, SACGHS has completed several major projects related to these 11 issues, and other projects are near completion. In the coming months, the Committee will be identifying new priority issues to address. SACGHS would welcome public perspectives about issues within SACGHS's charter that are in need of attention and study. Members of the public who wish to suggest an issue are asked to submit a statement (approximately one paragraph in length) that:

(1) Describes a problem or policy challenge that needs exploration; and (2) proposes actions the Committee could take to address the issue. The submission of references or other background materials related to the topic is encouraged.

The issues suggested should take into consideration the charge of SACGHS, outlined above, and the following points:

- The urgency and national importance of the issue.
- The extent to which the Federal Government has jurisdiction/authority over the issue.
- The need for Federal guidance or regulation on this issue.
- Whether the issue raises concerns that only the Federal Government can address.
- Whether the issue raises moral or ethical concerns that warrant Federal Government involvement/leadership.
- Whether SACGHS's policy advice on this issue would significantly benefit society.
- Whether failure to address the issue would prolong any negative impact the issue may be having on society.
- Whether sufficient data about the issue exist for SACGHS to develop informed policy advice.
- Whether another body is already addressing the issue or is better equipped to address it.

Public comments received by May 16, 2008 will be considered by SACGHS and discussed at its next meeting on July 7–8, 2008 in Washington, DC.

Dated: April 7, 2008.

Sarah Carr,

SACGHS Executive Secretary, National Institutes of Health.

[FR Doc. E8–8216 Filed 4–16–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Center for Infectious Diseases (BSC, CCID)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned committee:

Times and Dates:

9 a.m.–5 p.m., May 6, 2008.

8:30 a.m.–3:30 p.m., May 7, 2008.

Place: CDC Global Conference Center, Building 19, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, CCID, provides advice and guidance to the Director, CDC, and Director, CCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: Agenda items will include:

1. *Breakout Group Discussions:*

Surveillance (National Center for Preparedness, Detection, and Control of Infectious Diseases).

Respiratory Diseases Strategic Planning (National Center Immunization and Respiratory Diseases).

Vaccine Analytic Unit (National Center Immunization and Respiratory Diseases).

Program Collaboration and Service Integration (National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention).

International Activities (National Center for Zoonotic, Vector-Borne, and Enteric Diseases).
Strategic Planning and Linking to CDC Goals (National Center for Zoonotic, Vector-Borne, and Enteric Diseases).

2. *Updates on Surveillance Systems:* Biosurveillance.
3. Strategic Directions for CCID.
4. Budget Updates.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Harriette Lynch, Office of the Director, CCID, CDC, Mailstop A–45, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone (404) 639–4035.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8336 Filed 4–16–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Type-2 Diabetes Prevention in Women With a Recent History of Gestational Diabetes Mellitus, Potential Extramural Project (PEP) 2008–R–04.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1 p.m.–4 p.m., May 30, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Type-2 Diabetes Prevention in Women With a Recent History of Gestational Diabetes Mellitus, PEP 2008–R–04.''

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8326 Filed 4–16–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number 128]

Notice of Draft Document Available for Public Comment

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Draft Document Available for Public Comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the following draft document available for public comment entitled ''Preventing Occupational Exposures to Lead and Noise at Indoor Firing Ranges.'' The draft document and instructions for submitting comments can be found at *http://www.cdc.gov/niosh/review/public/-128/*. Comments should be provided to the NIOSH Docket Number above.

Public Comment Period: April 17, 2008 through June 30, 2008.

Status: Written comments may be submitted to the NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, Mailstop C–34, Cincinnati, Ohio 45226. All material submitted to the Agency should reference NIOSH Docket number 128 and must be submitted by June 30, 2008, to be considered by the Agency. All electronic comments should be formatted as Microsoft Word.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226. After the comment period has closed, comments may be accessed electronically at *http://www.cdc.gov/NIOSH* under the link to the NIOSH docket. As appropriate, NIOSH will post comments with the commenters' names, affiliations, and other information, on the Internet.

Background: This Alert is intended to address the concerns of Federal, State, and local law enforcement agencies about occupational exposures of their officers to lead and noise during firearms training and qualifications. The Alert describes the health effects that can occur from occupational exposures to lead and noise at indoor firing ranges and recommends steps that firing range operators, employers, and workers should take to minimize the health risk to workers and shooters.

This guidance document does not have the force and effect of law.

Contact Person for Technical Information:

Chucri (Chuck) A. Kardous, Commander, U.S. Public Health Service, Senior Research Engineer, Division of Applied Research and Technology, CDC/NIOSH, 4676 Columbia Parkway, C27, Cincinnati, Ohio 45225, Phone: 513–533–8146, E-mail: *ckardous@cdc.gov.*

Reference: Web address for this document: *http://www.cdc.gov/niosh/review/public/128/.*

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–8259 Filed 4–16–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Reinstatement of Generic Clearance for Partners and Customers Satisfaction Surveys

Summary: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Center for Scientific Review (CSR), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects. To request more information or to obtain a copy of the information collection plans, call the CSR Director of Planning, Analysis, and Evaluation on 301–435–1133.

Proposed Collection: Title: Reinstatement of Generic Clearance for Voluntary Partners and Customers

Satisfaction Surveys: *Reinstatement:* The information collected in these surveys will be used by the Center for Scientific Review management and personnel: (1) To assess the quality of the modified operations and processes now used by CSR to review grant applications; (2) To assess the quality of service provided by CSR to our customers; (3) To enable identification of the most promising biomedical research that will have the greatest impact on improving public health by using a peer review process that is fair, unbiased from outside influence, timely, and (4) To develop new modes of operation based on customer need and customer feedback about the efficacy of implemented modifications. These surveys, which will be both quantitative and qualitative, are designed to assess the quality of services we provide to our major external customers. Customers include the research scientists who submit applications for grant funding to NIH. Those grant applications are reviewed and ranked by the grant scientific peer review study groups' members and chairs. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline CSR's operations. Our partners include current grant scientific peer review study groups' members and chairs.

Frequency of Response: On occasion.

Affected Public: Scientific peer review study groups' members and chairs, grant applicants, other members of the research community.

Type of Respondents: Adult scientific professionals.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Instrument/activity	Annual number of respondents	Number of responses per respondent	Annual average burden per response (hours)	Total burden hours per annual collection
Focus Groups	75	1	2.5	187.5
Mail/telephone/e-mail Surveys	5,000	1	0.25	1,250
Annual Total	5,075			1,437.5

Request For Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Andrea Kopstein, Director of Planning, Analysis, and Evaluation, Center for Scientific Review, NIH, Room 3030, 6701 Rockledge Drive, Bethesda, MD 20892–7776, or call non-toll-free number (301) 435–1133 or E-mail your request, including your address to: *kopsteina@csr.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: April 7, 2008.

Andrea Kopstein,

Director of Planning, Analysis, and Evaluation.

[FR Doc. E8–8230 Filed 4–16–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Engineered Human Antibody Constant Domains (Nanoantibodies) as Scaffolds for Binders

Description of Technology: The invention describes conceptually novel scaffolds based on engineered human antibody constant domains (nanoantibody scaffold). They are highly soluble, very stable, monomeric, and can be expressed at high levels. Furthermore, large libraries are generated from which binders to antigens are selected and characterized.

Advantages:

The engineered antibody domains are more stable compared to existing domain antibodies.

The nanoantibodies are derived from human sequences and are likely to have minimal toxic and immunogenic effects.

The small size of the nanoantibodies ensures efficient penetration in tissues including solid tumors and lymphoid tissues where HIV replicates, and also efficient neutralization of viruses, e.g. HIV, that have evolved to avoid neutralization by naturally occurring large size IgGs generated by the immune system.

Applications: The nanoantibodies have potential for diagnosis and treatment of cancer and AIDS as well as diseases of the immune systems and other diseases.

Development Status: Proof of concept experiments have been completed.

Inventor: Dimiter Dimitrov (NCI).

Patent Status: U.S. Provisional Application No. 61/063,245 filed 31 Jan

2008 (HHS Reference No. E–003–2007/0–US–01).

Licensing Status: Available for exclusive and non-exclusive license.

Licensing Contact: Richard Rodriguez; 301–435–4013; *rodrigr@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute Center for Cancer Research Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize nanoantibodies as therapeutics or diagnostics including imaging agents. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Methods and Compositions for the Diagnosis of Neuroendocrine Lung Cancer

Description of Technology: The technology relates to the use of cDNA microarrays to facilitate the identification of pulmonary neuroendocrine tumors. In order to identify molecular markers that could be used to classify pulmonary tumors, the inventors examined the gene expression profiles of clinical samples from patients with small cell lung cancer (SCLC), large cell neuroendocrine carcinoma (LCNEC), and typical carcinoma (TC) tumors by cDNA microarray analysis to detect hybridization between cDNA from tumor cells and DNA from a panel of 8,897 human genes. Gene expression was found to be nonrandom and to exhibit highly significant clustering that divided the tumors into their assigned World Health Organization (WHO) classification with 100% accuracy. The inventors concluded that pulmonary neuroendocrine tumors could be classified based on the genome-wide expression profile of the clinical samples without further manipulations.

Applications:

Method to differentiate three types of pulmonary neuroendocrine tumors;

Method to diagnose pulmonary neuroendocrine cancer;

Neuroendocrine Microarray

Advantages: Accurate, rapid, easy to use diagnostic to stratify patients according to pulmonary tumors

Development Status: The technology is currently in the pre-clinical stage of development.

Market:

An estimated 1,444,920 new cancer diagnoses in the U.S. in 2007.

Cancer is the second leading cause of death in United States.

It is estimated that the cancer therapeutic market would double to $50 billion a year in 2010 from $25 billion in 2006.

Inventors: Curtis C. Harris *et al.* (NCI).

Relevant Publications: P He *et al.* Identification of carboxypeptidase E and γ-glutamyl hydrolase as biomarkers for pulmonary neuroendocrine tumors by cDNA microarray. Human Pathol. 2004 Oct;35(10):1196–1209.

Patent Status: U.S. Patent Application No. 10/533,459 filed 02 May 2005 (HHS Reference No. E–248–2002/0–US–04).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*

Dated: April 8, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–8213 Filed 4–16–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Substituted 3,6-diphenyl-7H-[1,2,4] triazolo[3,4-b] [1,3,4] Thiadiazines as Potent Inhibitors of PDE4A, PDE4B, and PDE4D

Description of Technology: Phosphodiesterase 4 (PDE4) is a major cAMP-metabolizing enzyme found in immune and inflammatory cells, airway smooth muscle, and pulmonary nerves. It plays a significant role within the inflammatory responses associated with asthma and chronic obstructive pulmonary disease (COPD) and its modulation has been linked to memory enhancement and depression. Due to its widespread therapeutic potential, PDE4 inhibitors are highly sought after agents for treating numerous disease states. While several PDE4 inhibitors have already advanced into clinical settings, unfavorable side effects including emesis, nausea, and abdominal pain emphasize the need for novel chemotypes with potent and selective PDE4 inhibition.

This technology describes a series of substituted 3,6-diphenyl-7H-[1,2,4] triazolo[3,4-b] [1,3,4] thiadiazines that act as inhibitors of PDE4. This core structure represents a novel chemotype within extensive classes of PDE4 inhibitors and the structure activity relationships of these PDE4 inhibitors identify key binding sites and substitutions critical to the functionality for potent PDE4 inhibition. Selectivity of this novel chemotype shows weak inhibitory potency against nine PDE isoforms excluding PDE4 and strong inhibitory potency against PDE4A, PDE4B, and PDE4D. In a selectivity comparison study, the novel chemotype performs better than the PDE4 inhibitor in clinical development. Subtype-selective PDE4 inhibitors are becoming increasingly more important as new research shows that independent PDE isoforms have differential effects on cells.

Applications: Treatment of numerous diseases associated with PDE4 including asthma, COPD, inflammatory bowel disease, and other anti-inflammatory diseases with other possible treatments including depression and psychosis.

Development Status: Pre-clinical.

Publication: AP Skoumbourdis *et al.* Identification of a potent new chemotype for the selective inhibition of PDE4. Bioorg Med Chem Lett. 2008 Feb 15;18(4):1297–1303.

Inventors: Craig J. Thomas *et al.* (NHGRI).

Patent Status: U.S. Provisional Application No. 61/020,079 filed 09 Jan 2008 (HHS Reference No. E–055–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov.*

Nitrite and Nitrite-Methemoglobin Therapy To Detoxify Stroma-Free Hemoglobin Based Blood Substitutes

Description of Technology: Cell-free hemoglobin based oxygen carriers (HBOCs) are blood substitutes and resuscitative agents that can be used to replace whole blood donations, alleviate blood shortages and reduce the risks of infections such as HIV and hepatitis. Stroma-free HBOCs offer the advantages of increased stability, consistency of supply, and reduced immunogenicity over the use of the alternative cell based sources. However, the side effects associated with their use, including vascular toxicity, pulmonary and systemic hypertension, myocardial infarction, inflammation, and platelet aggregation severely limit their scope of clinical applications. These adverse effects are due in part to the ability of free deoxygenated hemoglobin (deoxyHb) to scavenge for nitric oxide (NO) thus rendering it unavailable for vasodilating blood vessels.

This technology is a method of using nitrites to reduce the deleterious effects associated with HBOC use as blood substitutes. Free nitrites or nitrite-methemoglobin when added to stroma-free HBOCs are converted to NO and N_2O_3 which escapes the scavenging activity of deoxyHb and thus is free to vasodilate blood vessels. This maintains oxygen release and NO delivery enabling improved clinical outcomes. Recent studies, using this technology as a blood substitute, have led to a reversal of vasoconstriction, hypertension and hemorrhagic shock in animal models. This new approach also reduces the toxicity associated with the use of HBOCs as a blood substitute and may allow the widespread use of HBOCs as an alternative to cell based sources. In combination with this technology, HBOC blood substitutes may now be used to efficiently deliver therapeutic agents and maintain organ perfusion during trauma and surgery.

Advantages: Reduced toxicity of cell free hemoglobin blood substitutes; Increased blood perfusion in patients; Decreased dependence on blood donations.

Development Status: Pre-clinical.

Inventors: Mark T. Gladwin (NHLBI) *et al.*

Publication: S Basu, R Grubina, J Huang, J Conradie, Z Huang, A Jeffers, A Jiang, X He, I Azarov, R Seibert, A Mehta, R Patel, SB King, N Hogg, A Ghosh, MT Gladwin, DB Kim-Shapiro. Catalytic generation of N_2O_3 by the concerted nitrite reductase and anhydrase activity of hemoglobin. Nat Chem Biol. 2007 Dec;3(12):785–794.

Patent Status: U.S. Provisional Application No. 60/996,530 filed 31 Aug 2007 (HHS Reference No. E–259–2007/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov.*

Dated: April 8, 2008.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–8218 Filed 4–16–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Notice is hereby given of a meeting of the Services Subcommittee of the Interagency Autism Coordinating Committee (IACC).

The purpose of the Services Subcommittee is to review the current state of services and supports for individuals with Autism Spectrum Disorder (ASD) and their families in order to improve these services. The Subcommittee meeting will be closed to the public with attendance limited to IACC members. The Subcommittee will report on its meeting at the next meeting of the IACC on May 12, 2008.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Services Subcommittee.

Date: April 30, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: Review the current state of services and supports for individuals with ASD and their families.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Bethesda, MD 20892–9669. (Telephone Conference Call)

Contact Person: Tanya Pryor, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6198, Bethesda, MD 20892–9669, 301–443–7153, *pryort@mail.nih.gov.*

Information about the IACC is available on the Web site: *http://www.nimh.nih.gov/research-funding/scientific-meetings/recurring-meetings/iacc/index.shtml.*

Dated: April 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8226 Filed 4–16–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–20]

Renewal Communities Annual Progress Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Renewal Communities are required to submit annual reports to HUD on the progress of their Tax Incentive Utilization Plan in assisting State and local governments and community-based organizations in their outreach to the business community and residents.

DATES: *Comments Due Date:* May 19, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0173) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the

burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Renewal Communities Annual Progress Reporting.

OMB Approval Number: 2506–0173.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Renewal Communities are required to submit annual reports to HUD on the progress of their Tax Incentive Utilization Plan in assisting State and local governments and community-based organizations in their outreach to the business community and residents.

Frequency of Submission: On occasion, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	40	2		20		1,600

Total Estimated Burden Hours: 1,600.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 10, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–8318 Filed 4–16–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2008–N0083; 70135–8422–YKFX–U4]

Yukon Flats National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of the public comment period for the draft Environmental Impact Statement for a Proposed Land Exchange in Yukon Flats National Wildlife Refuge, Alaska.

SUMMARY: On January 25, 2008, the Fish and Wildlife Service published a **Federal Register** Notice (73 FR 4617) announcing the availability of the *Draft Environmental Impact Statement (DEIS) for a Proposed Land Exchange in the Yukon Flats National Wildlife Refuge, Alaska*, and the beginning of a 60-day comment period. In response to numerous requests from Tribal Governments, non-governmental organizations, and the general public we are reopening the comment period for an additional 30 days. We will consider these public comments when revising the document.

DATES: We must receive your comments on or before May 19, 2008.

ADDRESSES: Written comments should be mailed to: Yukon Flats EIS Project Office, c/o ENSR, 1835 S. Bragaw Street, Suite 490, Anchorage, AK 99508–3438 or submitted on-line at *http://yukonflatseis.ensr.com*. To request a paper copy or compact disk of the DEIS, contact: Cyndie Wolfe, Project Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS–231, Anchorage, AK 99503, or *yukonflats_noi@fws.gov* or at 907–786–3463. You may view or download a copy of the DEIS at: *http://yukonflatseis.ensr.com*. Copies of the DEIS may be viewed at the Yukon Flats National Wildlife Refuge Office in Fairbanks, Alaska and at the U.S. Fish and Wildlife Service Regional Office in Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Cyndie Wolfe at the above address.

Dated: April 10, 2008.

Gary Edwards,

Acting Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. E8–8263 Filed 4–16–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2008–N0084; 13410–1124–0000–K2]

Marine Mammal Protection Act; Stock Assessment Report

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft revised marine mammal stock assessment report for the northern sea otter stock in Washington State; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), the Fish and Wildlife Service (Service) has developed a draft revised marine mammal stock assessment report for the northern sea otter (*Enhydra lutris kenyoni*) stock in Washington State, which is available for public review and comment.

DATES: Comments must be received by July 16, 2008.

ADDRESSES: Copies of the draft revised stock assessment report for the northern sea otter in Washington State are available from the Manager, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive, SE., Suite 102, Lacey, WA 98503, (360) 753–9440. It can also be viewed in Adobe Acrobat at *http://www.fws.gov/westwafwo*.

If you wish to submit comments on the draft revised stock assessment report for the northern sea otter in Washington State, you may do so by any of the following methods:

1. You may mail or hand-deliver (during normal business hours) written comments to the Manager, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive, SE., Suite 102, Lacey, WA 98503.

2. You may fax your comments to (360) 753–9405.

3. You may send comments by electronic mail (e-mail) to *waseaottersar@fws.gov*.

SUPPLEMENTARY INFORMATION: One of the goals of the MMPA is to ensure that stocks of marine mammals occurring in waters under the jurisdiction of the United States do not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its optimum sustainable population level (OSP). OSP is defined as ''* * * the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.''

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, section 117 of the MMPA (16 U.S.C. 1361–1407) requires the Service and the National Marine Fisheries Service (NMFS) to prepare

stock assessment reports for each marine mammal stock that occurs in waters under the jurisdiction of the United States. These stock assessments are to be based on the best scientific information available and are, therefore, prepared in consultation with established regional scientific review groups. Each stock assessment must include: (1) A description of the stock and its geographic range; (2) minimum population estimate, maximum net productivity rate, and current population trend; (3) estimate of human-caused mortality and serious injury; (4) commercial fishery interactions; (5) status of the stock; and (6) potential biological removal level (PBR). The PBR is defined as '' * * * the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP.'' The PBR is the product of the minimum population estimate of the stock (N_{min}), one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0, which is intended to compensate for uncertainty and unknown estimation errors.

Section 117 of the MMPA also requires the Service and the NMFS to review and revise the stock assessment reports: (A) At least annually for stocks that are specified as strategic stocks; (B) at least annually for stocks for which significant new information is available; and (C) at least once every 3 years for all other stocks.

A strategic stock is defined in the MMPA as a marine mammal stock: (A) For which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), within the foreseeable future; or (C) which is listed as a threatened or endangered species under the Endangered Species Act, or is designated as depleted under the MMPA.

A summary of the draft revised stock assessment report for northern sea otters in Washington State is presented in Table 1. The table lists the stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and the status. After consideration of any public comments received, the Service will revise the stock assessment, as appropriate. We will publish a notice of availability and summary of the final stock assessment, including responses to the comments received.

In accordance with the MMPA, a list of the sources of information or public reports upon which the assessment is based is included in this notice.

TABLE 1.—SUMMARY OF DRAFT REVISED STOCK ASSESSMENT REPORT FOR THE NORTHERN SEA OTTER STOCK IN WASHINGTON STATE

Stock	N_{min}	R_{max}	F_r	PBR	Annual estimated average human-caused mortality	Stock status
Northern sea otters (Washington State)	790	0.20	0.1	8	Unknown	Non-Strategic.

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U.S. Department of Commerce (USDC). National Marine Fisheries Service 2003. Harbor seal (*Phoca vitulina richardsi*): Washington inland waters stock, stock assessment report. 6 pp.

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Dated: April 11, 2008.

Pamela A. Matthes,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8–8209 Filed 4–16–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–912–08–0777–XX]

Notice of Public Meetings; Western Montana, Central Montana, Eastern Montana, and Dakotas Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana, Central Montana, Eastern Montana, and Dakotas Resource Advisory Councils will meet as indicated below.

DATES: All four RACs will meet jointly on May 20–21, 2008. The joint meeting will be from 1 p.m. to 5 p.m. on May 20. The meeting will continue from 8 a.m. to noon on May 21. The meeting will be held at the Hampton Inn, 5110 Southgate Drive, Billings, Montana. Topics to be discussed include energy development, off-highway vehicle use, access, planning, and recreation fees. A public comment period will be held on May 20 at 3:30 p.m.

All four RACs will also hold individual meetings. The Central Montana RAC will meet May 19–20, 2008. The meeting will be from 1 p.m. to 5 p.m. on May 19 and will continue on May 20 from 8 a.m. to noon at the BLM Montana State Office at 5001 Southgate Drive, Billings, Montana. Among the items to be discussed are the Malta and Upper Missouri River Breaks National Monument Resource Management Plans, Undaunted Stewardship, and Forest Service recreation fees. The public comment period will be at 1 p.m. on May 19.

The Eastern Montana RAC will meet on May 21, 2008, from 1 p.m. to 3 p.m. at the BLM Montana State Office at 5001 Southgate Drive, Billings, Montana. Among its items of discussion will be upcoming meeting dates and follow-up on items from the joint RAC meeting. The public comment period will be at 1 p.m.

The Dakotas RAC will meet on May 21, 2008, from 1 p.m. to 5 p.m. at the BLM Montana State Office at 5001 Southgate Drive, Billings, Montana. Among its items of discussion will be the North Dakota and South Dakota resource management plans and coal development. The public comment period will be at 1 p.m.

The Western Montana RAC will meet on May 21, 2008, from 1 p.m. to 3 p.m. at the Hampton Inn, 5110 Southgate Drive, Billings, Montana. The public comment period will be at 1 p.m. The agenda items include Forest Service recreation fees. The public comment period will be at 1 p.m.

FOR FURTHER INFORMATION CONTACT: Mary Apple, State RAC Coordinator, BLM Montana State Office, 5001 Southgate Drive, Billings, MT 59101, (406) 896–5258.

SUPPLEMENTARY INFORMATION: The 15-member Councils advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana and the Dakotas All meetings are open to the public. The public may present written comments to the Councils. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided above.

Dated: April 10, 2008.

Theresa M. Hanley,

Acting State Director, Montana/Dakotas.

[FR Doc. E8–8260 Filed 4–16–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–08–1310–FI; COC67886]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC67886 from the following companies: (1) Cleary Petroleum Corp., (2) GSE LTD, (3) Peacock Comm. Properties, LTD, and (4) Joe R. Peacock, Sr., for lands in Montrose County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC67886 effective February 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: April 10, 2008.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E8–8237 Filed 4–16–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–08–1310–FI; COC59920]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC59920 from the following companies: (1) Cleary Petroleum Corp., (2) GSE LTD, (3) Peacock Comm. Properties, LTD, and (4) Joe R. Peacock, Sr., for lands in Montrose County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms

for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC59920 effective February 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: April 10, 2008.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E8–8238 Filed 4–16–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 016431]

Public Land Order No. 7704; Partial Revocation of Public Land Order No. 1483; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Public Land Order insofar as it affects 80 acres of public land within a national forest, which was withdrawn and reserved for use of the Forest Service as the Mt. Olympus Powder Magazine Administrative Site. This order also opens 5.75 acres of that land to disposal in accordance with the Forest Service Facility Realignment and Enhancement Act of 2005.

DATES: *Effective Date:* April 17, 2008.

FOR FURTHER INFORMATION CONTACT: Rhonda Flynn, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101–1345, 801–539–4132.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that a portion of the withdrawal created by Public Land Order No. 1483 is no longer needed and has requested a partial revocation. Approximately 20 acres of the land described in Paragraph 1 is located within the Mt. Olympus Wilderness Area, and this is a record-clearing action for that portion. Except for the land described in Paragraph 2 being opened to sale, no land will be opened to surface entry or mining until completion of an analysis to determine if any of the land needs special designation.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land Order No. 1483 (22 FR 7307), which withdrew public land within national forests and reserved it for use of the Forest Service for administrative sites, recreation areas, and a roadside zone, is hereby revoked only insofar as it affects the following described land:

Wasatch-Cache National Forest, Mt. Olympus Powder Magazine Administrative Site, Salt Lake Meridian

T.2 S., R. 1 E.
Sec. 11, lots 1 and 2 (formerly described as SE ¼ NE ¼) and NE ¼ SE ¼.

The area described contains approximately 80 acres in Salt Lake County.

2. Subject to valid existing rights, the following described land is hereby opened to sale in accordance with the Forest Service Facility Realignment and Enhancement Act of 2005 (Pub. L. 109–54):

Salt Lake Meridian

T.2 S., R. 1 E.
Sec. 11, lot 2.

The area described contains approximately 5.75 acres in Salt Lake County.

Dated: April 7, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8–8321 Filed 4–16–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget (OMB); Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (OMB #1024–XXXX).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before May 19, 2008.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–XXXX), Office of Information and Regulatory Affairs, OMB, by fax at 202–395–6566, or by electronic mail at *oira_docket@omb.eop.gov*. Please also send a copy of your comments to Dr. Jane Swanson, Protected Areas Social Research Unit, College of Forest Resources, University of Washington, Seattle, WA 98195; or via phone at 206–685–9150; or via fax at 206–685–0790; or via e-mail at *swansonj@u.washington.edu.*

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 ''Eye'' St., Washington, DC 20005; or via phone 202–513–7189; or via e-mail *James_Gramann@partner.nps.gov*. You are entitled to a copy of the entire ICR package free-of-charge. You may access this ICR at *http://www.reginfo.gov/public/*.

Comments Received on the 60-Day ***Federal Register*** *Notice:* The NPS published a 60-Day Notice to solicit public comments on this ICR entitled ''Research Assessing Current and Potential Impacts of Cruise Ships on Visitor Experiences in Glacier Bay National Park and Preserve'' in the **Federal Register** on November 5, 2007 (72 FR 62489–62490). The comment period closed on January 4, 2007. After multiple notifications to stakeholders requesting comments, the NPS received four comments as a result of the publication of this 60-Day **Federal Register** Notice.

We received four public comments on the proposed visitor study in Glacier Bay National Park and Preserve (GLBA). All of these comments were based only on the information included in the 60-day notice. Two comments were from charter operators who have agreements with GLBA. The first of these indicated that interviewing of charter operators and other gatekeepers is critical in order to get a complete picture as many of their clients are unaware of actions the operators take to avoid cruise ships at critical points in the itinerary. She further stated she was not opposed to cruise ships, appreciated the balance the park was working to achieve, and appreciated the opportunity to have the operators' voice heard. The comment was addressed in a reply e-mail acknowledging her understanding of the gatekeeper interview component of the proposed research, attaching the

proposed interview guide, and offering to send the complete work plan and questionnaires if she desired.

The second comment, received from another charter operator, indicated feeling overwhelmed by cruise ships not in GLBA, but everywhere else in Southeast Alaska. He believes the park does a good job managing vessels within park waters. His concern is with other areas of development in Hobart Bay and Tracy Arm and he sent a description of the development planned for Hobart Bay. The comment was addressed in a reply email thanking him for sharing his experience and concerns with cruise ships in Southeast Alaska, as it helps project staff understand the broader context of the proposed project. An offer to send the complete work plan and questionnaires was accepted, the information was sent, and no further comment has been received.

The other two comments were on behalf of cruise ship companies. The first of these comments was sent from John Shively, Vice President—Government and Community Relations, Holland America Line. The comment indicated a need for more information regarding the survey methods and a desire to review them and the survey instruments. Additionally the comment noted that the company was unaware that cruise ship size was an issue the National Park Service desired to study. The comment was addressed in a reply e-mail thanking him for his comments and interest in the project and included the complete work plan and survey instruments for review. A return e-mail indicated that he would review the documents upon his return from a 10-day trip.

The second cruise ship company comment was from Charlie Bell, President, Princess Cruises, and primarily indicated concerns about survey methods because of the limited scope of the summary included in the 60-day notice. The comment was addressed by an email reply that thanked him for his comments and interest in the research and included the complete work plan and survey instruments. No further comment has been received.

SUPPLEMENTARY INFORMATION:

Title: Research Assessing Current and Potential Impacts of Cruise Ships on Visitor Experiences in Glacier Bay National Park and Preserve.

Bureau Form Number(s): None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New collection.

Description of Need: The proposed study would provide information to be used in deciding cruise ship use levels in Glacier Bay National Park. The purpose of this research is to provide Park managers with information about current impacts of cruise ships, if any, on the quality of visitor experience and to estimate potential impacts on the quality of visitor experience for cruise ship use levels specified in the Record of Decision (Record of Decision for Vessel Quotas and Operating Requirements in Glacier Bay National Park and Preserve, 2003).

The Final Environmental Impact Statement for Vessel Quotas and Operating Requirements, and the resulting Record of Decision signed November 21, 2003, currently guide vessel management in Glacier Bay National Park and Preserve (GLBA). The Record of Decision adopted an alternative that maintains the current daily maximum of two cruise ships in the park and sets seasonal use days for the June-August season at 139 ships. The Record of Decision also provides for possible increases in cruise ship use. Specifically, use in the June-August season could be increased to two ships per day, every day, for a seasonal use total of 184 ships. The Record of Decision provided the following direction for the role of research in the process of changing quotas for cruise ships:

> The determination of whether to increase seasonal-use day quotas for cruise ships will rely on criteria that define the environmental and social conditions to be met before any additional seasonal-use days are approved. These criteria will be based on the results of and guidance provided through studies that examine the effects of vessels on all park resources and visitor experience. (p. 18.)

The Record of Decision also specified that the studies examining the effects of cruise ships would be identified with the assistance of a Glacier Bay Vessel Management Science Advisory Board (SAB). The SAB was established and a final report of its findings and recommendations was published in September 2005. The SAB recommended a comprehensive research program that was presented in general terms with no prioritization or cost estimates. Because the research program outlined in the SAB could not be performed within the time and budget limitations facing park managers, the SAB recommended (and park managers agreed to fund) a social research problem analysis. Upon review of the final Problem Analysis, park staff decided on a research program that would focus primarily on measuring impacts of cruise ships, if any, on the quality of visitor experience and secondarily on understanding the context in which cruise ship impacts occur and how these impacts arise. To accomplish these objectives, this proposed research includes the following components: (1) Assessment of cruise ship impacts, if any, on the quality of visitor experience, and (2) The role of experience gatekeepers in visitor encounters with cruise ships.

1. Assessing Impacts of Cruise Ships, if Any, on the Quality of Visitor Experiences in Glacier Bay Proper

The purpose of the proposed study is to provide park managers with information about a variety of potential impacts of cruise ships on all visitor groups that have potential to encounter a cruise ship in Glacier Bay proper. Information about impacts of other mechanized transport, if any, on the quality of visitor experience will also be collected (1) to provide a context for understanding the role of cruise ships on the quality of visitor experience and (2) to examine aggregate effects of mechanized transport on the quality of visitor experience. This research, proposed for the 2008 summer season, will use on-site and mail questionnaires to gather data for estimating impact rates for different user groups. Additionally, in-depth interviews with visitors will provide additional information about how these impacts arise and visitors' opinions of the appropriateness of cruise ships in Glacier Bay proper.

2. The Role of Experience Gatekeepers in Visitor Encounters With Cruise Ships

Discussions with experience providers indicate that these individuals may adjust itineraries in an effort to provide visitors with a particular experience. Often that experience is one where few other vessels are encountered. Understanding these practices and how the increase in 2-cruise-ship days may affect them are the primary objectives of this research component. This information will be integral when estimating population impacts under the 2-cruise-ships every day scenario. Gatekeepers identified include charter and tour boat captains, kayak guides, and VIS staff who issue permits and provide guidance to kayakers and captains of private vessels. Interviews, to be conducted during the summer 2008 use season, will rely on an open-ended, in-depth process. The obligation to respond is voluntary.

Automated data collections: This information will be collected via in-person interviews and surveys and mail-back surveys. No automated data collection will take place.

Description of respondents: Component 1—survey and interviews: Cruise ship passengers, tour boat passengers, charter boat passengers, people entering on private vessel permits, and people entering on backcountry permits who visit Glacier Bay proper between June 1, 2008, and August 31, 2008. *Component 1—itinerary data:* Charter and tour boat captains and kayak guides who serve visitors included in the survey component of the project. *Component 2:* Charter and tour boat captains, kayak guides, and VIS staff who serve visitors to Glacier Bay proper during the 2008 summer season.

Estimated average number of respondents: Component 1: 2800 respondents for on-site survey; 1960 respondents for mail survey; 100 respondents for interviews; 24 respondents for itinerary data. *Component 2:* 27 interview respondents. Non-respondents: 1305 (component 1: 460 on-site, 842 mail-back; component 2: 3 on-site)

Estimated average number of responses: Component 1: 2800 responses for on-site survey, 1960 responses for mail survey; 100 responses for interview. *Component 2:* 27 interview responses. Non-responses: 1305 (component 1: 460 on-site, 842 mail-back; component 2: 3 on-site).

Estimated average burden hours per response: Component 1: 3 minutes for on-site survey respondents; 25 minutes for mail questionnaire; 30 minutes for interview respondents. *Component 2:* 15 minutes. Non-respondent: 1 minute for on-site; 3 minutes for mail-back.

Frequency of Response: 1 time per respondent.

Estimated total annual reporting burden: 1,064 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being gathered; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 9, 2008.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. E8–8137 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the American Museum of Natural History, New York, NY, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

Prior to 1900, W.T. Smith acquired 104 cultural items through excavations at what is now called the Clements Site, on his land in Cass County, TX. In 1900, Mr. Smith sold the cultural items to the museum. The 104 cultural items are 3 celts, 25 glass beads, 1 piece of green pigment, 3 knives, 3 pipes, 29 shell beads and pendants, 5 unmodified shells, 1 shell implement, and 34 ceramic vessels.

The three celts are ground from a type of shale commonly known as ''green stone.'' The 25 glass beads are blue, opaque, and round. The one piece of green pigment has a clay-like consistency. The three knives are made of chipped chert. Of the three ceramic pipes, two are complete and elbow-shaped, and one is a broken bowl. The 29 shell beads and pendants include 15 marine shells carved into zoomorphic shapes, 6 marine shell ear discs, 6 barrel-shaped marine shell beads, and 2 worn and cut freshwater mussel shells. The five unmodified shells are unmodified freshwater mussel shell valves. The one shell implement is a complete freshwater mussel valve, modified for use as a hoe. The 34 ceramic vessels include 15 water vessels, 2 vases, 3 pots, and 14 bowls.

The determination that the cultural items are unassociated funerary objects is based on museum documentation, consultation information provided by representatives of the Caddo Nation of Oklahoma, and expert opinion. Museum documentation specifically indicates that these cultural items were associated with burials. The museum is not in possession of the human remains from these burials. Based on ceramic style and archeological evidence, these cultural items date to between CE 1680 and 1720. Historical and archeological evidence indicates that the Cass County region was occupied by the Caddo during the historic period, and that this group emerged from pre-contact Caddoan culture dating back to approximately CE 850. Expert analysis and consultation have confirmed that the ceramics are consistent with the established Caddoan ceramic sequence.

At an unknown date, C.C. Jones collected seven cultural items from an unknown locality in the vicinity of Shreveport, LA. The museum acquired the cultural items from Mr. Jones, through purchase or as a gift, and accessioned them at an unknown date between 1869 and 1890. The seven cultural items are two ceramic vessels and five ceramic fragments. The two ceramic vessels are one pot and one water vessel. The five ceramic fragments are from a single vessel.

The determination that the cultural items are unassociated funerary objects is based on museum documentation, consultation information provided by the Caddo Nation of Oklahoma, expert opinion, and an article published by Mr. Jones in which he states that these objects were removed from an ''ancient burial ground.'' The museum is not in possession of any human remains from these burials. Based on ceramic style, the two vessels date to between CE 1600 and 1750, while the fragments cannot be dated. Historical and archeological evidence indicates that the Shreveport region was occupied by the Caddo during the historic period, and that this group emerged from pre-contact Caddoan culture dating back to approximately CE 850. Expert analysis and consultation have confirmed that the ceramics are consistent with the established Caddoan ceramic sequence.

At an unknown date, DeCost Smith collected one cultural item from an unknown locality in the Ouachita River valley of either Arkansas or Louisiana. The museum acquired the cultural item in 1940, along with more than 200 others, through Mr. Smith's bequest. The one cultural item is a ceramic bottle.

The determination that this item is an unassociated funerary object is based on museum documentation, consultation information provided by the tribe and expert opinion. Though museum documentation does not specifically indicate that this cultural item was associated with a burial, the condition of the item and its type are consistent with a funerary context. Based on ceramic style, this cultural item dates to between CE 1500 and 1750. Historical and archeological evidence indicates that the Ouachita River valley region was occupied by the Caddo during the historic period, and that this group emerged from pre-contact Caddoan culture dating back to approximately CE 850. Expert analysis and consultation have confirmed that this bottle is consistent with the established Caddoan ceramic sequence.

Between 1916 and 1917, Mark Harrington collected cultural items from the Ozan and Washington sites in Hempstead County, AR, during a Museum of the American Indian expedition. The museum acquired the cultural items from the Museum of the American Indian in an exchange in 1920. The 31 cultural items are 29 ceramic vessels and 2 vessel fragments. The 29 ceramic vessels are 2 bottles, 14 bowls, and 13 jars. The two vessel fragments are those of a jar.

The determination that these items are unassociated funerary objects is based on museum documentation, consultation information provided by the Caddo Nation of Oklahoma, expert opinion, and archival information held at the Smithsonian National Museum of the American Indian. While museum documentation and archival information specifically identifies only six of the objects as having been associated with burials, field records, the condition of the items and type of object, indicate a funerary context. Based on ceramic style, the vessels date to between CE 850 and 1700. Historical evidence indicates that the Hempstead County region was occupied by the Caddo during the historic period, and that this group emerged from pre-contact Caddoan culture dating back to approximately CE 850. Expert analysis and consultation have confirmed that the ceramics are consistent with the established Caddoan ceramic sequence.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001(3)(B), the 143 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Caddo Nation of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, before May 19, 2008. Repatriation of the unassociated funerary objects to the Caddo Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: March 18, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8295 Filed 4–15–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the California Department of Parks and Recreation, Sacramento, CA. The human remains and associated funerary objects were removed from Butte County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by California Department of Parks and Recreation Committee on Repatriation and professional staff in consultation with representatives of Mechoopda Indian Tribe of Chico Rancheria, California; Round Valley Indian Tribes of the Round Valley Reservation, California; and United Maidu Nation, a non-federally recognized Indian group. The Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; and Mooretown Rancheria of Maidu Indians of California were contacted to participate in the consultations.

In February and April of 1963, human remains representing a minimum of 25 individuals were removed from the Murphy site, located 3 miles southeast of Gridley, on the west bank of the Feather River in southern Butte County, CA. The site was excavated by volunteer students from Chico State College, Sacramento State College, and American River College in Sacramento, CA, under the direction of William H. Olsen. No known individuals were identified. The 546 associated funerary objects are 457 beads, 4 blades, 3 bone tools, 2 bowls, 1 disk, 6 flakes, 1 flaker, 15 food remains, 2 gorge hooks, 1 hammer stone, 1 incised tube, 1 knife, 9 ornaments, 2 pestles, 9 pins, 17 projectile points, 1 quartz crystal, 2 rocks, 1 scraper, 1 seed, 2 utilized flakes, and 8 whistles.

Excavations at the Murphy site were intended to salvage materials and information prior to site destruction for agriculture, and were related to researching the cultural chronology of the Lake Oroville vicinity. The Murphy site, dated circa A.D. 500–1500, is attributed to the Bidwell Complex (A.D. 1–A.D. 800), Sweetwater Complex (A.D. 800–1500), and Oroville Complex (A.D. 1500–1833). These sequences have been linked as the cultural antecedents of the Maidu. Geographic affiliation is consistent with the historically documented Konkow, also known as Northwestern Maidu.

In 1957, human remains representing a minimum of one individual were removed from the Garner's Cave site, which is located 7 miles north of Chico along Rock Creek in northern Butte County, CA. In 1957, the human remains and associated funerary objects were donated to the State Indian Museum, which is part of the California Department of Parks and Recreation, by Otis Croy of Yuba City, CA. No known individual was identified. The 41 associated funerary objects are 1 awl, 1 basketry material, 1 botanical sample, 2 choppers, 1 cord, 11 food remains, 1 net, 1 reed, 16 seeds, 2 twigs, and 4 unidentified wood samples.

Based on a May 1992 check of the California Office of Historic Preservation site files, identification of this collection as Garner's Cave was determined. The cave was named for the landowner Jay Garner of Chico, CA. The burial from the Garner's Cave site has been attributed to the proto–Historic period. The Bidwell Complex, Sweetwater Complex, and Oroville Complex are sequences that have been linked as the cultural antecedents of the Maidu in the region. No lineal descendant has been identified. Geographic affiliation is consistent with the historically documented Konkow or Northwestern Maidu.

In 1966 and 1967, human remains representing a minimum of 125 individuals were removed from the Tie–Wiah site, located 6 miles northeast of Oroville, now under the main body of Lake Oroville; formerly northeast of the confluence of the North and South Forks of the Feather River, southeastern Butte County, CA. The site was first excavated by American River College in 1964 under the direction of Charles Gebhardt. In 1966, the California Department of Parks and Recreation sponsored excavations under the direction of Eric W. Ritter. In 1967, the excavation was under the direction of Roland Gage of Sacramento State College, as part of a salvage archeology excavation prior to inundation by Lake Oroville, with funds provided by the Department of Water Resources. No known individuals were identified. The 1,301 associated funerary objects are 3 acorns, 1 antler tine, 5 awls, 18 beads, 2 bifaces, 1 blade, 11 bone tools, 59 bowls, 1 burin and knife, 5 charcoal samples, 14 choppers, 1 chopper and core, 2 cores, 1 drill, 240 flakes, 732 food remains, 1 gorge, 1 hammer stone and mano, 18 hammer stones, 26 knives, 5 manos, 11 metates, 5 mortars, 1 mud dob, 22 pestles, 2 pigments, 6 pipes, 1 projectile point fragment, 37 projectile points, 34 quartz crystals, 1 rod, 15 scrapers, 4 scraper planes, 5 seeds, 2 seed beaters, 1 shaft straightner, 2 tubes, 3 unknown steatite and glass, 1 whetstone, and 1 whistle.

The Tie–Wiah site appears to have been occupied intermittently from the Messilla Complex (circa 1000 B.C.–A.D.1), Bidwell Complex, Sweetwater Complex, and finally to the Oroville Complex. The oldest radiocarbon date from the Tie–Wiah site is 950 years B.P. (±150 years). The Bidwell Complex, Sweetwater Complex, and Oroville Complex are sequences that have been linked as the cultural antecedents of the Maidu in the region. Geographic affiliation is consistent with the historically documented Konkow or Northwestern Maidu. No lineal descendants have been identified.

In 1960 and 1961, human remains representing a minimum of 56 individuals were removed from the Chapman site, Sweetwater Springs, located 3 miles north of Oroville, north of the Thermalito Diversion Pool, east of Morris Ravine in south central Butte County, CA, during excavations on the site by William H. Olsen and Francis A. Riddell of the State Indian Museum. In 1979, the human remains were transferred from Sutter's Fort Annex in Sacramento to the State Archeological Collections and Research Facility in West Sacramento and inventoried by the California Department of Parks and Recreation in 1982. No known individuals were identified. The 1,480 associated funerary objects are 1 antler, 9 awls, 1,143 beads, 8 blades, 9 bone tools, 24 bowls, 1 chopper, 4 cobbles, 3 cores, 1 core/scraper, 33 flakes, 69 food remains, 1 glass fragment, 1 gorge hook, 7 hammer stones, 11 incised bones, 4 knives, 5 manos, 5 metates, 1 mortar, 28 ornaments, 2 pendants, 7 pestles, 2 pigments, 3 pipes, 74 projectile points, 6 quartz crystals, 5 scrapers, 1 slide sample, 7 spatulas, 3 spoons, 1 utilized flake, and 1 whetstone.

The Chapman site is attributed to the Sweetwater Complex. The Sweetwater Complex has been linked as the cultural antecedents of the Maidu in the region. The associated funerary objects are consistent with the occupation of the site by people attributed to the Sweetwater Complex. Geographic affiliation is consistent with the historically documented Konkow or Northwestern Maidu. No lineal descendants have been identified.

In the mid–1960s, human remains representing a minimum of one individual were removed from an unknown site, located 8 miles north of Oroville, 2 miles southwest of Cherokee, along the Western Pacific Railroad in central Butte County, CA, possibly during surveys and excavations for the Lake Oroville reservoir project. No known individual was identified. No associated funerary objects are present.

The site is attributed to the Messilla Complex. The Messilla Complex has been attributed to a possible sporadic occupation of the area by an intrusion of Hokan speakers. However, the succeeding Bidwell Complex, Sweetwater Complex, and Oroville Complex are sequences that have been linked as the cultural antecedents of the Maidu. Generally, archeologists believe that the Penutian–speaking Maidu are descended from what have been identified as the Windmiller people who occupied the Central Valley of California from 3,000 to 4,000 years ago. No lineal descendant has been identified. Geographic affiliation is consistent with the historically documented Konkow (Northwestern Maidu).

In 1961 and 1962, human remains representing a minimum of seven individuals were removed from the Western Pacific Railroad Relocation site, 8 miles north of Oroville, along the Western Pacific Railroad line in south central Butte County, CA, by the Central California Archaeological Foundation, directed by William H. Olsen and Francis A. Riddell, during excavations under contract to California Department of Parks and Recreation with funds provided by Department of Water Resources. Mr. Riddell directed a second phase of excavations in the summer of 1962 with a Chico State College archeological field methods class. The new Western Pacific Railroad line cut through the site, almost completely destroying it. The old railroad right–of–way was inundated by Lake Oroville. No known individuals were identified. The 62 associated funerary objects are 2 blades, 11 flakes, 39 food remains, 1 metate, 1 projectile point, and 8 whistles.

The Western Pacific Railroad site was occupied from circa A.D. 800 to 1833, during both Sweetwater Complex (to A.D. 1500) and Oroville Complex (after A.D. 1500), which have been linked as cultural antecedents of the Maidu. There are two radiocarbon dates from the site with the first at 370 years B.P. (+150) and the second at 565 B.P. (+250). The associated funerary objects are consistent with the occupation of the site by people attributed to the Sweetwater Complex. No lineal descendant has been identified. Geographic affiliation is consistent with the historically documented Konkow (Northwestern Maidu).

In 1964, human remains representing a minimum of 15 individuals were removed from an unknown site, 3 miles northeast of Oroville, downstream from the Oroville Dam spillway, along the Thermalito Diversion Pool, in south central Butte County, CA, under the direction of Francis A. Riddell, State Indian Museum with funds provided by the Department of Water Resources. A significant portion of the deposit has been removed due to natural erosion and vandalism. No known individuals were identified. The 1,420 associated funerary objects are 4 awls, 12 beads, 1 blade, 13 bone tools, 6 bowls, 2 charcoal samples, 2 choppers, 14 cobbles, 17 cores, 1 core/scrapper, 2 drills, 421 flakes, 845 food remains, 1 hammer stone/mano, 8 hammer stones, 6 knives,

2 knife/scraper, 5 manos, 1 metate, 5 pendants, 3 pestles, 2 pigment, 2 pins, 1 pipe, 11 projectile points, 4 quartz crystals, 4 rocks, 1 rod, 14 scrapers, 3 seeds, 3 slags, 1 unknown, 2 utilized flakes, and 1 wood sample.

The burials have been attributed to the Bidwell Complex. The oldest radiocarbon date from the site is 2,800 years B.P. (±100 years). The Bidwell Complex, Sweetwater Complex, and Oroville Complex are sequences that have been linked as the cultural antecedents of the Maidu. The associated funerary objects are consistent with the occupation of the site by people attributed to the Bidwell Complex. Generally, archeologists believe that the Penutian-speaking Maidu are descended from what have been identified as the Windmiller people who occupied the Central Valley of California from 3,000 to 4,000 years ago. No lineal descendant has been identified. Geographic affiliation is consistent with the historically documented Konkow (Northwestern Maidu).

In 1930, human remains representing a minimum number of two individuals were removed from the Bidwell Ranch site, 4 miles east of Chico, 6 miles west of Paradise, along Little Chico Creek, from the Bidwell Ranch, in northwestern Butte County, CA, by a private individual on private land. On January 13, 1930, the collection was received by the State Indian Museum from J. McCord Stilson of Chico, CA, and purchased in 1933 from one of his heirs, Mrs. Harry Clark of Hamilton City. No known individuals were identified. No associated funerary objects are present.

The age of the human remains is unknown. No lineal descendants have been identified. The Bidwell Ranch's geographic location is consistent with the historically documented Konkow or Northwestern Maidu territory.

Butte County, CA, is in the Central Valley region of California and the traditional lands of the Maidu. The history of the formation of California Indian reservations and rancherias in the Central Valley regions of California reveal that the descendants of the historical Konkow (Northwestern Maidu) were ultimately dispersed to several federally recognized Native American groups. Descendants of the Konkow or Northwestern Maidu are members of the federally recognized tribes of the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and Round Valley Indian Tribes of the Round Valley Reservation, California.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of 232 individuals of Native American ancestry. Officials of the California Department of Parks and Recreation also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 4,850 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and Round Valley Indian Tribes of the Round Valley Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 Ninth Street, Room 902, Sacramento, CA 95814, telephone (916) 653–7976, before May 19, 2008. Repatriation of the human remains and associated funerary objects to the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians, California; and Round Valley Indian Tribes of the Round Valley Reservation, California may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians, California; and Round Valley Indian Tribes of the Round Valley Reservation, California that this notice has been published.

Dated: March 19, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8301 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Denver Museum of Nature & Science, Denver, CO. The human remains and associated funerary objects were removed from Mesa County, CO; Navajo County, AZ; San Juan County, NM; and an unknown location.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Denver Museum of Nature & Science professional staff in consultation with the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santa Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New

Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

At an unknown date, human remains representing a minimum of one individual were removed from an unspecified location, possibly near Grand Junction, Mesa County, CO. At an unknown date, the human remains came into the possession of Ed Fover of Grand Junction, CO. In 1952, Mr. Fover donated the human remains to the museum (DMNS catalogue number A373.1). No known individual was identified. No associated funerary objects are present.

Mr. Fover identified the human remains as ''Basketmaker.'' Morphological evidence, such as occipital flattening, supports the identification of the human remains as Native American and possibly as Ancestral Puebloan. Probable provenience in Western Colorado is within the area of Pre-Columbian cultures that archeologists have referred to as ''Puebloid,'' which is now incorporated under ''Ancestral Puebloan.'' The estimated age of the human remains is 1000 B.C.-A.D. 750, based on the age of known Basketmaker sites.

In 1965, human remains representing a minimum of one individual were removed from Four Mile Ruin in Taylor, Navajo County, AZ, by Francis V. Crane. In 1968, Mr. Crane and his wife, Mary W.A. Crane, donated the human remains to the museum (DMNS catalogue number AC.8314). No known individual was identified. The 40 associated funerary objects are 38 potsherds (2 polychrome, 8 Black on Red, 14 Black on White, and 14 undecorated) and 2 pieces of chert (DMNS catalogue numbers AC.8533A-C).

The human remains are determined to be Ancestral Puebloan based on provenience and consultation with Puebloan tribal groups. The funerary objects associated with the human remains are diagnostic of Pre-Columbian Pueblo culture, specifically a Pueblo IV pottery type. During consultation, Puebloan tribal groups indicated Four Mile Ruin, the source site, was occupied by their ancestors. The estimated age of the human remains based on the Pueblo IV ceramics is A.D. 1300–1600.

At an unknown date, human remains representing a minimum of one individual were removed from an unspecified location by Gerald B. Fenstermaker. In 1966, Mary W.A. Crane and Francis V. Crane acquired the human remains from Mr. Fenstermaker. In 1983, the Cranes donated the human remains to the museum (DMNS catalogue number AC.9570). No known individual was identified. No associated funerary objects are present.

Mr. Fenstermaker was a collector of American Indian archeological materials. Mr. Fenstermaker identified the human remains as Pre-Columbian ''Mimbres'' culture, which dates from the Pueblo III period. Consultation with modern Puebloan groups indicates that the Mimbres archeological culture is deemed to be ancestral Puebloan. Morphological indications, such as occipital flattening, also support the determination that the human remains are Ancestral Puebloan. The estimated age of the human remains is A.D. 1100–1300, based on the age of known Mimbres sites.

At an unknown date, human remains representing a minimum of one individual were removed from a kiva on a private ranch near Aztec, San Juan County, NM. At an unknown date, Bernice Strawn acquired the human remains from an unnamed individual. In 1986, Ms. Strawn donated the human remains to the museum (DMNS catalogue number A1990.1). No known individual was identified. No associated funerary objects are present.

During consultation, modern Puebloan groups indicated that kivas were uniquely built by their ancestors as ceremonial and religious structures. Since the human remains were removed from a kiva, they are therefore identified as Puebloan.

Based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, and expert opinion, the officials of the Denver Museum of Nature & Science have determined the cultural affiliation of the human remains and associated funerary objects described above with present-day Native American tribes. Although some oral tradition and scientific studies suggest a shared relationship between the Navajo and O'odham with the Ancestral Puebloan peoples; and during consultation the Navajo Nation emphasized that some clans express a deep affinity with Ancestral Pueblo or ''Anasazi'' sites, the officials of the Denver Museum of Nature & Science have determined that there is not currently a preponderance of evidence to support cultural affiliation to the human remains and their associated funerary remains with the Navajo and/or O'odham. Officials of the Denver Museum of Nature & Science have determined, based on the preponderance of the evidence, that the descendants of Ancestral Puebloans are members of the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santa Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of four individuals of Native American ancestry. Officials of Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 40 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santa Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Chip Colwell-Chanthaphonh, Denver Museum of Nature & Science, 2001 Colorado

Boulevard, Denver, CO 80205, telephone (303) 370–6378, before May 19, 2008. Repatriation to the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santa Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santa Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: March 10, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8291 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Kingman Museum, Incorporated, Battle Creek, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Kingman Museum, Incorporated, Battle Creek, MI. The human remains were removed from Jemez Indian Reservation, Sandoval County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Prior to 2000, a detailed assessment of the human remains was made by Kingman Museum of Natural History professional staff in consultation with representatives of the Pueblo of Jemez, New Mexico. The U.S. Department of the Interior, Bureau of Indian Affairs does not exert control over the human remains in this notice.

On September 17, 2002, Calhoun County Probate Court transferred the public trust for Kingman Memorial Museum of Natural History from Battle Creek Public Schools to Kingman Museum, Incorporated, a private, nonprofit 501(c)(3) charitable organization. In April of 2006, collection ownership was transferred from the Battle Creek Public Schools to Kingman Museum, Incorporated.

At an unknown date, human remains representing a minimum of one individual were removed from the Jemez Indian Reservation, NM. It is unknown how the human remains were obtained, as no catalog number was assigned by the Kingman Museum of Natural History. No known individual was identified. No associated funerary objects are present.

Papers located with the human remains indicate they belong to the Pueblo of Jemez. The original box in which the human remains were stored is lost. The cultural affiliation of the human remains is based upon geographical location determined from the papers accompanying the human remains. Based on museum records and geographical information, officials of the Kingman Museum, Incorporated reasonably believe that the human remains are Native American and culturally affiliated with the Pueblo of Jemez, New Mexico.

Officials of Kingman Museum, Incorporated have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of Kingman Museum, Incorporated also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pueblo of Jemez, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Katie Nelson, Collection Manager, Kingman Museum, Incorporated, 175 Limit Street, Battle Creek, MI 49037, telephone (269) 965–5117, before May 19, 2008. Repatriation of the human remains to the Pueblo of Jemez, New Mexico may proceed after that date if no additional claimants come forward.

Kingman Museum, Incorporated is responsible for notifying the Pueblo of Jemez, New Mexico that this notice has been published.

Dated: March 5, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8292 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Kingman Museum, Incorporated, Battle Creek, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects of the Kingman Museum, Incorporated, Battle Creek, MI. The human remains and associated funerary objects were removed from an island near Metlakatla, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25

U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Prior to 2000, a detailed assessment of the human remains was made by Kingman Museum of Natural History professional staff in consultation with representatives of the Metlakatla Indian Community, Annette Island Reserve.

On September 17, 2002, Calhoun County Probate Court transferred the public trust for Kingman Memorial Museum of Natural History from Battle Creek Public Schools to Kingman Museum, Incorporated, a private, nonprofit 501(c)(3) charitable organization. In April of 2006, collection ownership was transferred from the Battle Creek Public Schools to Kingman Museum, Incorporated.

Before 1904, human remains representing a minimum of two individuals were removed from a cave in the mountains on an island near Metlakatla, AK. According to museum documentation, the human remains, consisting of a mummified head and a human scalp, were found by two Native American boys and were collected by Esther Gibson, an Alaskan missionary. The mummified head and scalp were in a burial box containing a cedar bark basket used for cremation ashes, and a buckskin pouch. Dr. John Harvey Kellogg donated the human remains and cultural items to the Kingman Museum of Natural History in 1904. It is unknown how the human remains and cultural items were transferred from Esther Gibson to Dr. John Harvey Kellogg. No known individuals were identified. The three associated funerary objects are one burial box, one basket for cremation ashes, and one buckskin pouch.

The individuals have been identified as Native American based on the museum's documentation, geographic information, and consultation evidence. The location of the burial is within the historically documented territory of the Metlakatla Indians. The exact date of the burial is unknown, but based on burial practices and the style of associated funerary objects, the human remains are post-contact and likely to date to the 19th century. Information provided at the time of consultation indicates that the human remains and associated funerary objects are likely to be affiliated to the members of the Metlakatla Indian Community.

On an unknown date, human remains representing a minimum of one individual were donated to the Kingman Museum of Natural History. The human remains consist of a shock of human hair, wrapped in brown paper and tied with string. Attached to the string is a tag labeled ''Hair of Metlakatla Man—Alaska.'' No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on the museum's documentation, geographic information, and consultation evidence. The museum's catalog describes the human hair as belonging to a Metlakatla man. Information provided at the time of consultation indicates that the human remains are likely to be affiliated to members of the Metlakatla Indian Community.

Officials of Kingman Museum, Incorporated have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of a minimum of three individuals of Native American ancestry. Officials of Kingman Museum, Incorporated also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the three objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Kingman Museum, Incorporated also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the associated funerary objects and the Metlakatla Indian Community, Annette Island Reserve.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Katie Nelson, Collection Manager, Kingman Museum, Incorporated, 175 Limit Street, Battle Creek, MI 49037, telephone (269) 965–5117, before May 19, 2008. Repatriation of the human remains and associated funerary objects to the Metlakatla Indian Community, Annette Island Reserve may proceed after that date if no additional claimants come forward.

Kingman Museum, Incorporated is responsible for notifying the Metlakatla Indian Community, Annette Island Reserve that this notice has been published.

Dated: March 10, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8303 Filed 4–17–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Michigan Technological University Department Of Social Sciences Archaeology Laboratory, Houghton, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Michigan Technological University Department of Social Sciences Archaeology Laboratory, Houghton MI. The human remains were removed from the Gros Cap Cemetery (20MK6) in Moran Township, Mackinac County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by professional staff from the Michigan Technological University Department of Social Sciences Archaeology Laboratory and Illinois State Museum, Springfield, IL, in consultation with representatives of the Bay Mills Indian Community, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan.

In 1979, the human remains representing a minimum of one individual were removed from the surface of the Gros Cap Cemetery site, 20MK6, Mackinac County, MI. No known individual was identified. No associated funerary objects are present.

The Gros Cap Cemetery site (20MK6) is an active township cemetery in the present day, sharing a site with a purported multi-ethnic 17th century cemetery. The human remains had been exposed on the surface by unknown processes. Both prehistoric pottery of unknown age or ethnic affiliation, as well as 19th century coffin parts were recovered in association with the human remains. The human remains from 20MK6 were recovered from lands historically occupied by the Bay Mills Indian Community of Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Sault Ste. Marie Tribe of

Chippewa Indians of Michigan. Based on the information, the officials of Michigan Technological University Department of Social Sciences Archaeology Laboratory reasonably determined that the human remains were likely Native American. However, the officials of Michigan Technological University Department of Social Sciences Archaeology Laboratory considered the available information insufficient to conclude that the human remains are culturally affiliated to a present-day Indian tribe, and reasonably determined the human remains to be culturally unidentifiable.

Officials of the Michigan Technological University Department of Social Sciences Archaeology Laboratory have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above likely represent the physical remains of one individual of Native American ancestry. Officials of the Michigan Technological University Department of Social Sciences Archaeology Laboratory also have determined that, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.

In July of 2007, the Bay Mills Indian Community of Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan formally requested disposition of the human remains from Michigan Technological University to their tribes. Tribal representatives of the Bay Mills Indian Community of Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan agree that they historically occupied the geographic area where the Gros Cap Cemetery/Burial site is located, and continue to have a presence in the area mentioned.

In July of 2007, officials of Michigan Technological University requested that the Native American Graves Protection and Repatriation Review Committee (Review Committee) recommend disposition of the one culturally unidentifiable human remains from 20MK6, and further requested that the committee recommend disposition of the human remains to the Bay Mills Indian Community of Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan. The Review Committee is responsible for recommending specific actions for disposition of culturally unidentifiable human remains.

On October 15–16, 2007, the Review Committee considered the request and concurred with the proposal for the disposition of the culturally unidentifiable human remains to the Bay Mills Indian Community of Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan. In a letter dated November 28, 2007, the Department of the Interior considered the Review Committee's recommendation and independently concurred with its findings and recommendations to proceed with the disposition pursuant to the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Susan R. Martin, Michigan Technological University Department of Social Sciences Archaeology Laboratory, Houghton, MI 49931, telephone (906) 487–2366, before May 19, 2008. Disposition of the human remains to the Bay Mills Indian Community of Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan may proceed after that date if no additional claimants come forward.

The Michigan Technological University Department of Social Sciences Archaeology Laboratory is responsible for notifying the Bay Mills Indian Community of Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan that this notice has been published.

Dated: March 12, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8293 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State University, Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of Oregon State University, Department of Anthropology, Corvallis, OR. The human remains were removed from an unknown location in Hawaii.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Oregon State University, Department of Anthropology professional staff in consultation with representatives of the Office of Hawaiian Affairs.

On an unknown date, human remains representing a minimum of three individuals were removed from an unknown location in Hawaii. The human remains were donated to the Department of Anthropology by Dr. T. Tillman of the Oregon State University Physical Education Department upon his retirement (H0001–086–001, H0001–077–001, and H0001–081–0001). Dr. Tillman received the skulls from the widow of an unknown collector between 1940 and 1978. No known individuals were identified. No associated funerary objects are present.

The collection records state that all three individuals are ''Indian.'' The Department of Anthropology's physical anthropology faculty confirms that all three skulls have cranial morphology consistent with Native Hawaiian ancestry. According to collection records and consultation, the human remains were removed from locations in the traditional and current territory of Native Hawaiian organizations. Consultation with the Office of Hawaiian Affairs supports the origins of these three individuals from the Hawaiian Islands.

Officials of the Oregon State University, Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of three individuals of Native Hawaiian ancestry. Officials of the Oregon State University, Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native Hawaiian human remains and the Hui Malama I Na Kupuna O Hawai'i Nei and Office of Hawaiian Affairs.

Representatives of any other Native Hawaiian Organization that believes itself to be culturally affiliated with the human remains should contact Dr.

David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–4515, before May 19, 2008. Repatriation of the human remains to the Office of Hawaiian Affairs may proceed after that date if no additional claimants come forward.

Oregon State University, Department of Anthropology is responsible for notifying the Hawaii Island Burial Council; Hui Malama I Na Kupuna O Hawai'i Nei; Kauai/Niihau Island Burial Council; Maui/Lanai Island Burial Council; Molokai Island Burial Council; O'ahu Burial Committee, and the Office of Hawaiian Affairs that this notice has been published.

Dated: March 18, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8294 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State University Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from Harney County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Oregon State University Department of Anthropology professional staff in consultation with representatives of the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon and Confederated Tribes of the Umatilla Reservation, Oregon.

On an unknown date, human remains representing a minimum of one individual were removed from a site in Drewsey, Harney County, OR. The donor and circumstances of removal are unknown (UNKNO–C89–0001). No known individual was identified. No associated funerary objects are present.

Consultation with tribes indicates that Drewsey, Harney County, OR, is in the traditional and current territory of the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon. Based on provenience, the human remains are reasonably believed to be affiliated with the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon.

Officials of the Oregon State University Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Oregon State University Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–4515, before May 19, 2008. Repatriation of the human remains to the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon may proceed after that date if no additional claimants come forward.

Oregon State University Department of Anthropology is responsible for notifying the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Coquille Tribe of Oregon; Cow Creek Band of Umpqua Indians of Oregon; and Klamath Tribes, Oregon that this notice has been published.

Dated: March 18, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8298 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State University Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from an unknown location in Kodiak Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Oregon State University Department of Anthropology professional staff in consultation with representatives of the Kodiak Alutiiq Sugpiaq Repatriation Commission acting on behalf of the Afognak Native Corporation; Akhiok-Kaguyak, Inc.; Ayakuklik, Inc.; Bell Flats Natives, Inc.; Kaguyak Village; Koniag, Inc.; Leisnoi, Inc.; Lesnoi Village (aka Woody Island); Litnik, Inc.; Native Village of Afognak; Native Village of Akhiok; Native Village of Karluk; Native Village of Larsen Bay; Native Village of Ouzinkie; Native Village of Port Lions; Natives of Kodiak, Inc.; Old Harbor Native Corporation; Ouzinkie Native Corporation; Shuyak, Inc.; Sun'aq Tribe of Kodiak; Uganik Natives, Inc.; Uyak, Inc.; and Village of Old Harbor.

On an unknown date, human remains representing a minimum of two individuals were removed from an unknown location in Kodiak Island, AK. No additional information about previous donors or records is known. No known individuals were identified. No associated funerary objects are present.

Consultation with the Kodiak Alutiiq Sugpiaq Repatriation Commission and collection records indicate that the human remains are from Kodiak Island, AK, and are culturally affiliated with the Native Alaskan tribes who traditionally occupy Kodiak Island. Descendants of the tribes who

traditionally occupy Kodiak Island are members of the Afognak Native Corporation; Akhiok-Kaguyak, Inc.; Ayakuklik, Inc.; Bell Flats Natives, Inc.; Kaguyak Village; Koniag, Inc.; Leisnoi, Inc.; Lesnoi Village (aka Woody Island); Litnik, Inc.; Native Village of Afognak; Native Village of Akhiok; Native Village of Karluk; Native Village of Larsen Bay; Native Village of Ouzinkie; Native Village of Port Lions; Natives of Kodiak, Inc.; Old Harbor Native Corporation; Ouzinkie Native Corporation; Shuyak, Inc.; Sun'aq Tribe of Kodiak; Uganik Natives, Inc.; Uyak, Inc.; and Village of Old Harbor.

Officials of the Oregon State University Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001(9-10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Oregon State University Department of Anthropology have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Afognak Native Corporation; Akhiok-Kaguyak, Inc.; Ayakuklik, Inc.; Bell Flats Natives, Inc.; Kaguyak Village; Koniag, Inc.; Leisnoi, Inc.; Lesnoi Village (aka Woody Island); Litnik, Inc.; Native Village of Afognak; Native Village of Akhiok; Native Village of Karluk; Native Village of Larsen Bay; Native Village of Ouzinkie; Native Village of Port Lions; Natives of Kodiak, Inc.; Old Harbor Native Corporation; Ouzinkie Native Corporation; Shuyak, Inc.; Sun'aq Tribe of Kodiak; Uganik Natives, Inc.; Uyak, Inc.; and Village of Old Harbor.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737-4515, before May 19, 2008. Repatriation of the human remains to the Afognak Native Corporation; Akhiok-Kaguyak, Inc.; Ayakuklik, Inc.; Bell Flats Natives, Inc.; Kaguyak Village; Koniag, Inc.; Leisnoi, Inc.; Lesnoi Village (aka Woody Island); Litnik, Inc.; Native Village of Afognak; Native Village of Akhiok; Native Village of Karluk; Native Village of Larsen Bay; Native Village of Ouzinkie; Native Village of Port Lions; Natives of Kodiak, Inc.; Old Harbor Native Corporation; Ouzinkie Native Corporation; Shuyak, Inc.; Sun'aq Tribe of Kodiak; Uganik Natives, Inc.; Uyak, Inc.; and Village of Old Harbor may proceed after that date if no additional claimants come forward.

Oregon State University Department of Anthropology is responsible for notifying the Afognak Native Corporation; Akhiok-Kaguyak, Inc.; Ayakuklik, Inc.; Bell Flats Natives, Inc.; Kaguyak Village; Koniag, Inc.; Leisnoi, Inc.; Lesnoi Village (aka Woody Island); Litnik, Inc.; Native Village of Afognak; Native Village of Akhiok; Native Village of Karluk; Native Village of Larsen Bay; Native Village of Ouzinkie; Native Village of Port Lions; Natives of Kodiak, Inc.; Old Harbor Native Corporation; Ouzinkie Native Corporation; Shuyak, Inc.; Sun'aq Tribe of Kodiak; Uganik Natives, Inc.; Uyak, Inc.; and Village of Old Harbor that this notice has been published.

Dated: March 18, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8300 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State University Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from an unknown location in Western Kentucky.

This notice is published as part of the National Park Service;s administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Oregon State University Department of Anthropology professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; and Shawnee Tribe, Oklahoma.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown site in Western Kentucky, by George Karl Neumann, a physical anthropologist working out of Indiana State University, Terre Haute, IN. In 1976, the Oregon State University Department of Anthropology acquired the Neumann Collection from Indiana State University. The human remains are identified in the collection records as a ''Western Kentucky, Shawnee.'' No known individual was identified. No associated funerary objects are present.

The Absentee-Shawnee Tribe of Indians of Oklahoma, Eastern Shawnee Tribe of Oklahoma, and Shawnee Tribe, Oklahoma traditionally occupied Western Kentucky. Consultation with the Delaware Nation supports the cultural affiliation of this individual with the Shawnee culture group.

Officials of the Oregon State University Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Oregon State University Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Absentee-Shawnee Tribe of Indians of Oklahoma, Eastern Shawnee Tribe of Oklahoma, and Shawnee Tribe, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–4515, before May 19, 2008. Repatriation of the human remains to the Absentee-Shawnee Tribe of Indians of Oklahoma, Eastern Shawnee Tribe of Oklahoma, and Shawnee Tribe, Oklahoma may proceed after that date if no additional claimants come forward.

Oregon State University Department of Anthropology is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; and Shawnee Tribe, Oklahoma that this notice has been published.

Dated: March 18, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8313 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State University Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from Yakima County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Oregon State University Department of Anthropology professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; and Confederated Tribes of the Umatilla Reservation, Oregon.

On an unknown date, human remains representing a minimum of one individual were removed from Natches Heights, Yakima, Yakima County, WA. The human remains, consisting of one cranial fragment, were donated to the Department of Anthropology by Dr. T. Tillman of the Oregon State University Physical Education Department upon his retirement (UNKNO–027–0001). Dr. Tillman received the human remains from the widow of an unknown collector between 1940 and 1978. No known individual was identified. No associated funerary objects are present.

The collection records state that the individual is ''Indian.'' According to collection records and tribal consultation, the human remains were removed from a location in the traditional and current territory of the Confederated Tribes and Bands of the Yakama Nation, Washington.

Officials of the Oregon State University Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Oregon State University Department of Anthropology have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–4515, before May 19, 2008. Repatriation of the human remains to the Confederated Tribes and Bands of the Yakama Nation, Washington may proceed after that date if no additional claimants come forward.

Oregon State University Department of Anthropology is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; and Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: March 18, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8315 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State University Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from an unknown location, possibly from North Dakota, South Dakota, or Montana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Oregon State University Department of Anthropology professional staff in consultation with representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown location in either North Dakota, South Dakota, or Montana, by George Karl Neumann, a physical anthropologist working out of Indiana State University, Terre Haute, IN. In 1976, the Oregon State University Department of Anthropology acquired the Neumann Collection from Indiana State University. This individual is referenced in the accession records as N095 and identified in the collection records as a ''Lakotid Mandan skull.'' No known individual was identified. No associated funerary objects are present.

Officials of the Oregon State University Department of Anthropology, in consultation with representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, and based on collection and database records, reasonably believe that the human remains are affiliated with present-day tribes belonging to the Lakota Mandan culture group. Tribes belonging to the Lakota Mandan culture group are the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Officials of the Oregon State University Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Oregon State University Department of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–3850, before May 19, 2008. Repatriation of the human remains to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may proceed after that date if no additional claimants come forward.

Oregon State University Department of Anthropology is responsible for notifying the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: March 18, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8316 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State University Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from Stutsman County, ND.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Oregon State University Department of Anthropology professional staff in consultation with representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.

On an unknown date, human remains representing a minimum of two individuals were removed from Indian Mounds in Jamestown, Stutsman County, ND. The human remains, consisting of two skulls, were donated to the Department of Anthropology by Dr. T. Tillman of the Oregon State University Physical Education Department upon his retirement. Dr. Tillman received the human remains from the widow of an unknown collector between 1940 and 1978. No known individuals were identified. No associated funerary objects are present.

The collection records state that both individuals are ''Indian,'' and the Department of Anthropology's physical anthropology faculty confirms that the skulls have cranial morphology consistent with Native American ancestry. According to collection records and tribal consultation, the human remains were removed from the traditional territory of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; and Standing Rock Sioux Tribe of North & South Dakota. Consultation with the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana supports the origins of the individuals from the Stutsman County area.

Officials of the Oregon State University Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Oregon State University Department of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; and Standing Rock Sioux Tribe of North & South Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–4515, before May 19, 2008. Repatriation of the human remains to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; and Standing Rock Sioux Tribe of North & South Dakota may proceed after that date if no additional claimants come forward.

Oregon State University Department of Anthropology is responsible for notifying the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; and Standing Rock Sioux Tribe of North & South Dakota that this notice has been published.

Dated: March 18, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8319 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Colorado State Office, Denver, CO, and Museum of Western Colorado, Grand Junction, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of the Interior, Bureau of Land Management, Colorado State Office, Denver, CO. and in the possession of the Museum of Western Colorado, Grand Junction, CO. The human remains were removed from Garfield County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d) (3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Bureau of Land Management, Smithsonian Institution, and Museum of Western Colorado professional staff in consultation with representatives of the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

In 1976, human remains representing a minimum of one individual were removed from site 5GF344 in Garfield County, CO, by Mary Zang and Ed Carter. The human remains were collected from the surface of the site in an arroyo. The human remains were turned over to the Garfield County sheriff, who then contacted the Bureau of Land Management, as the human remains had been removed from Federal land. The human remains were then transferred to the Museum of Western Colorado for curation. No known individual was identified. No associated funerary objects are present.

In 1976, it was reported that a scaffold or platform was located in a tree in close proximity to the human remains. This scaffold or platform was never located. The field check of the site location provided no further details concerning the origin of the human remains. All parties concluded that the human remains had been carried down the drainage. In 1999, the human remains were studied by researchers at the Smithsonian Institution to determine if they were Native American. This analysis concluded that the human remains were Native American, based on cranial features and were consistent with other Ute crania identified from Utah and Colorado. In addition, near the location where the human remains were found is a concentration of Ute sites within approximately a five mile radius consisting of a Ute wickiup village and petroglyphs. This area is historically associated with the Uintah-Ouray Ute Tribe. Descendants of the Uintah-Ouray Ute are members of the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

Officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Bureau of Land Management also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Susan Thomas, NAGPRA Coordinator, Bureau of Land Management, Colorado, 27501 Highway 184, Dolores, CO 81323, telephone (970) 882–5600, before May 19, 2008. Repatriation of the human remains to the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah may proceed after that date if no additional claimants come forward.

The Bureau of Land Management is responsible for notifying the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain of the Ute Mountain Reservation, Colorado, New Mexico & Utah that this notice has been published.

Dated: March 10, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8305 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Cibola National Forest, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the U.S. Department of Agriculture, Forest Service, Cibola National Forest, Albuquerque, NM. The human remains and associated funerary objects were removed from Socorro County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Cibola National Forest professional staff in consultation with the Pueblo of Ysleta del Sur of Texas.

In 1987, human remains representing a minimum of one individual were removed from AR 03–03–03–334 in Socorro County, NM, by Forest Service personnel following the report of the presence of a human skull on the surface of the site from the Socorro County Sheriff's Department. The human remains have been curated in a secure storage facility at the Forest Supervisor's Office of the Cibola National Forest and were discovered during a recent review by Forest Service personnel of the contents of boxes in that facility. No known individual was identified. The 15 associated funerary objects are pottery sherds, charcoal and chipped stone.

Archeological evidence of both material culture and settlement patterns indicate that site AR 03–03–03–334 is a small pre-historic Puebloan habitation site that was occupied intermittently between A.D. 900 to A.D. 1250/1300 (Pueblo II/Pueblo III). The site is ancestral to the nearby large, late prehistoric Puebloan site at Gallinas Springs (occupied from the 14th to 16th century). The Gallinas Springs site was

a part of the Piro Province in early contact era New Mexico (16th century). Archeological and historical evidence link the inhabitants of the Piro Province to the present-day inhabitants of the Pueblo of Ysleta del Sur of Texas. Based on material culture, site organization and architecture, site AR 03–03–03–334 has been identified as a small, prehistoric Puebloan habitation site that was occupied between A.D. 900 and A.D. 1250/1300, in the Piro Province of central New Mexico. The present-day descendants of the Piro Province populations are the Pueblo of Ysleta del Sur of Texas. Oral traditions provided by representatives of the Pueblo of Ysleta del Sur of Texas support cultural affiliation.

Officials of the Cibola National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Cibola National Forest also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 15 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Cibola National Forest have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Pueblo of Ysleta del Sur of Texas.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and/or associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Boulevard SE, Albuquerque, NM 87102, telephone (505) 842–3238, before May 19, 2008. Repatriation of the human remains and associated funerary objects to the Pueblo of Ysleta del Sur of Texas may proceed after that date if no additional claimants come forward.

Cibola National Forest is responsible for notifying the Pueblo of Ysleta del Sur of Texas that this notice has been published.

Dated: March 18, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8307 Filed 4–17–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Homeland Security, U.S. Coast Guard, 13th Coast Guard District, Seattle, WA, and Oregon State University Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of Homeland Security, U.S. Coast Guard, 13th Coast Guard District, Seattle, WA, and in the possession of Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from Chiefs Island and Gregory Point, Coos County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Oregon State University Department of Anthropology professional staff on behalf of the U.S. Coast Guard, 13th Coast Guard District, in consultation with representatives of Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon.

In 1977, human remains representing a minimum of one individual were removed from 35CS011 in Coos County, OR, during a cultural resource evaluation project conducted under the supervision of John Draper and Glenn Hartmann of the Department of Anthropology, Oregon State University. No known individual was identified. No associated funerary objects are present.

The site, near Cape Arago lighthouse installation, is on United States Coast Guard property. The site is located on Chiefs Island and Gregory Point, an area that is used for burials by the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. The site is also located within the ancestral territory of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon as outlined in tribal Resolution No. 91–010.

Officials of the Oregon State University Department of Anthropology, on behalf of the U.S. Coast Guard, 13th Coast Guard District, have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Oregon State University Department of Anthropology, on behalf of the U.S. Coast Guard, 13th Coast Guard District, also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–4515, before May 19, 2008. Repatriation of the human remains to the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon may proceed after that date if no additional claimants come forward.

Oregon State University Department of Anthropology is responsible for notifying the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Reservation, Oregon; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Coquille Tribe of Oregon; Cow Creek Band of Umpqua Indians of Oregon; and Klamath Tribes, Oregon that this notice has been published.

Dated: March 12, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–8290 Filed 4–16–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974; as Amended; Amendments to Existing Systems of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed amendment of existing systems of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Bureau of Reclamation is issuing public

notice of its intent to amend 22 existing Privacy Act system of records notices to add a new routine use to authorize the disclosure of records to individuals involved in responding to a breach of Federal data.

DATES: Comments received on or before May 27, 2008 will be considered.

ADDRESSES: Any persons interested in commenting on these proposed amendments may do so by submitting comments in writing to the Bureau of Reclamation Privacy Act Officer, Mr. Casey Snyder, Bureau of Reclamation, 84–21300, Building 67, P.O. Box 25007, Denver, Colorado 80225 or by e-mail to *csnyder@do.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation Privacy Act Officer, Mr. Casey Snyder, at 303–445–2048.

SUPPLEMENTARY INFORMATION: On May 22, 2007, in a memorandum for the heads of Executive Departments and Agencies entitled ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information,'' the Office of Management and Budget directed agencies to develop and publish a routine use for disclosure of information in connection with response and remedial efforts in the event of a data breach. This routine use will serve to protect the interest of the individuals whose information is at issue by allowing agencies to take appropriate steps to facilitate a timely and effective response to the breach, thereby improving its ability to prevent, minimize or remedy any harm resulting from a compromise of data maintained in its systems of records. Accordingly, the Bureau of Reclamation, Department of the Interior, is proposing to add a new routine use to authorize disclosure to appropriate agencies, entities, and persons, of information maintained in the following systems in the event of a data breach.

These amendments will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. Reclamation will publish a revised notice if changes are made based upon a review of comments received.

Dated: March 14, 2008.

Randy Feuerstein,

Chief Information Officer, Denver Office.

SYSTEM NAMES:

Interior, WBR–5: ''Claims.'' (Published March 17, 1999, 64 FR 13234)

Interior, WBR–7: ''Concessions.'' (Published December 9, 1999, 64 FR 69032)

Interior, WBR–11: ''Identification/Security Cards.'' (Published February 9, 2000, 65 FR 6393)

Interior, WBR–12: ''Inventions and Patents.'' (Published July 28, 1999, 64 FR 40894)

Interior, WBR–13: ''Irrigation Management Service.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–14: ''Land Exchange.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–15: ''Land Settlement Entries.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–17: ''Lands—Leases, Sales, Rentals, and Transfers.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–19: ''Mineral Location Entries.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–22: ''Oil and Gas Applications.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–28: ''Real Property and Right-of-Way Acquisitions.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–29: ''Right-of-Way Applications.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–31: ''Acreage Limitation.'' (Published March 17, 1999, 64 FR 13234)

Interior, WBR–32: ''Special Use Applications, Licenses, and Permits.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–37: ''Trespass Cases.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–38: ''Water right Applications.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–39: ''Water Rights Acquisition.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–40: ''Water Sales and Delivery Contracts.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–41: ''Permits.'' (Published June 3, 1999, 64 FR 29876)

Interior, WBR–43: ''Real Estate Comparable Sales Data Storage.'' (Published June 23, 1999, 64 FR 33504)

Interior, WBR–45: ''Equipment, Supply, and Service Contracts.'' (Published August 11, 1999, 64 FR 43714)

Interior, WBR–48: ''Lower Colorado River Well Inventory.'' (Published June 3, 1999, 64 FR 29874)

NEW ROUTINE USE:

DISCLOSURES OUTSIDE THE DEPARTMENT OF THE INTERIOR MAY BE MADE:

To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) Reclamation has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by Reclamation or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with Reclamation's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

[FR Doc. E8–8265 Filed 4–16–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 10, 2008, a proposed consent decree in *United States, et al.,* v. *Weyerhaeuser Co.,* No. 3:08-cv-5220, was lodged with the United States District Court for the Western District of Washington.

In this action the United States, State of Washington, Puyallup Tribe of Indians and Muckleshoot Indian Tribe sought natural resource damages for releases of hazardous substances into Commencement Bay, Washington. Under the consent decree, defendant will pay $728,884.00 in natural resource damages and reimburse $47,441.99 in damage assessment costs.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States* v. *Weyerhaeuser Co.,* No. 3:08-cv-5220, D.J. Ref. No. 90–11–2–1049/12.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In

requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 for the decree only or $8.25 for the decree with attachments (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–8280 Filed 4–16–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 10, 2008, a proposed consent decree in *United States, et al.*, v. *BHP Hawaii, Inc.,* No. 3:08–cv–5221, was lodged with the United States District Court for the Western District of Washington.

In this action the United States, State of Washington, Puyallup Tribe of Indians and Muckleshoot Indian Tribe sought natural resource damages for releases of hazardous substances into Commencement Bay, Washington. Under the consent decree, defendant will pay $46,592.00 in natural resource damages and reimburse $5,169.33 in damage assessment costs.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States* v. *BHP Hawaii, Inc.,* No., 3:08–cv–5221, D.J. Ref. No. 90–11–2–1049/10.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.75 for the decree only or $8.50 for the decree with attachments (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–8281 Filed 4–16–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Order of Settlement Under the Clean Water Act

Notice is hereby given that on April 11, 2008, a proposed Stipulation and Order of Settlement in *United States* v. *Puget Sound Energy, Inc.,* No. C08–5223–FDB, was lodged with the United States District Court for the Western District of Washington.

The United States' complaint in this civil action alleged that on November 3, 2006, the Crystal Mountain Emergency Generation Facility, an electrical generating facility owned and operated by Puget Sound Energy, Inc. (''PSE'') in Pierce County, Washington, discharged approximately 429 barrels of diesel fuel into waters of the United States or adjoining shorelines. The complaint sought the imposition of a civil penalty pursuant to section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3). Under the Stipulation and Order of Settlement, PSE will pay a civil penalty of $471,900.00.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Stipulation and Order of Settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States* v. *Puget Sound Energy, Inc.,* No. C08–5223–FDB (W.D. Wash.), D.J. Ref. No. 90–5–1–1–09177.

During the comment period, the Stipulation and Order of Settlement may be examined at the Region 10 office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, and on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Stipulation and Order of Settlement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $1.25 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–8274 Filed 4–16–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0001]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review; Report of Theft or Loss of Controlled Substances; DEA Form 106.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 29, page 8066 on February 12, 2008, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 19, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Theft or Loss of Controlled Substances (DEA Form 106).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA Form 106.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Not-for-profit, State, local or tribal government.

Abstract: Title 21 CFR, 1301.74(c) & 1301.76(b) require DEA registrants to complete and submit DEA–106 upon discovery of a theft or significant loss of controlled substances. This provides accurate accountability and allows DEA to monitor substances diverted for illicit purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 6,250 registrants submit 9,500 forms annually for this collection, taking .5 hours (30 minutes) to complete each form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,750 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 14, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–8275 Filed 4–16–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0003]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review; ARCOS Transaction Reporting; DEA Form 333.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 29, page 8065 on February 12, 2008, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 19, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* ARCOS Transaction Reporting—DEA Form 333.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Form 333. Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None. *Abstract:* Controlled substances Manufacturers and distributors must report acquisition/distribution transactions to DEA to comply with Federal law and international treaty obligations. This information helps to ensure a closed system of distribution for these substances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 1,173 respondents, with 7,768 responses annually to this collection. DEA estimates that it takes 1 hour to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates this collection has a public burden of 7,768 hours annually.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 14, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–8279 Filed 4–16–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *March 31 through April 4, 2008.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–62,888; Johnson Controls, Inc., Foamech Plant, Georgetown, KY: February 21, 2007.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,917; Fallon Luminous Products Corp., Spartanburg, SC: February 27, 2007.

TA–W–62,925; Domtar Corporation Paper and Pulp Mill, Port Edwards, WI: February 27, 2007.

TA–W–63,008; Burley Design LLC, Leased Workers of Labor Ready and

Personnel Source, Eugene, OR: March 14, 2007.

TA–W–62,583; Peoploungers, Nettleton, MS: December 18, 2006.

TA–W–62,756; Waco Scaffolding and Equipment, Cleveland, OH: January 28, 2007.

TA–W–62,835; Panasonic Shikoku Electronics Corp. of America, Express Personnel Services, Vancouver, WA: March 22, 2008.

TA–W–62,886; Smith Jones, Inc., b/d/a Midwest Manufacturing Company, Kellogg, IA: July 26, 2007.

TA–W–62,914; Carrollton Specialties Products, Carrollton, MO: February 20, 2007.

TA–W–63,046; Alcoa Incorporated, Alcoa Wheel & Transportation Productions, Adecco Manpower, Beloit, WI: March 19, 2007.

TA–W–62,975; Catherine Coatney Design, San Francisco, CA: March 7, 2007.

TA–W–63,087; G8 Fashion, Inc., New York, NY: March 19, 2007.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,850; Magnesium Aluminum Corporation, Alliance Staffing Solutions, Cleveland, OH: February 13, 2007.

TA–W–62,897; Motorola, Inc., Fort Worth, TX: March 17, 2008.

TA–W–62,929; Delphi Corporation, Including Enhanced Manufacturing, Columbia, TN: February 20, 2007.

TA–W–62,967; Riverside Manufacturing Company, Wadley Plant, Wadley, GA: March 5, 2007.

TA–W–63,033; Lear Corporation, Roscommon, MI: March 13, 2007.

TA–W–63,044; Springs Global US, Inc., Piedmont Bedding Division, Piedmont, AL: April 5, 2008.

TA–W–63,056; Eaton Corporation, Fuel Emission & Safety Controls, Kelly Aerotek, Accountemps, Oxford, MI: March 18, 2007.

TA–W–63,064; Evolutionary Concepts, Inc., Division of ITT Corporation, San Dimas, CA: March 22, 2007.

TA–W–62,962; Copeland Corporation, Leased Workers From Personal Services Unlimited, Shelby, NC: April 7, 2008.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,073; Oberg Industries, Chandler, AZ: March 25, 2007.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–62,888; Johnson Controls, Inc., Foamech Plant, Georgetown, KY.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–63,042; Lemco Mills, Inc., Burlington, NC.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,966; Chemtura Corporation, Morgantown, WV.

TA–W–62,687; Georgia-Pacific Corporation, Plywood Plant, Crossett, AR.

TA–W–62,839; Inverness Corporation, Fairlawn, NJ.

TA–W–62,843; Dematic Corporation, Formerly Siemens Dematic, Grand Rapids, MI.

TA–W–62,976; Erie County Plastics Incorporated, Corry, PA.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–62,809; Edwards Vacuum, Inc., Wilmington, MA.

TA–W–63,016; Electronic Data Systems, Vendor Management Center, Dayton, OH.

TA–W–63,062; Donna's Distribution, Chicago, IL.

TA–W–63,065; Power-One, Inc., Design Engineering Department, Andover, MA.

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *March 31 through April 4, 2008*. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 11, 2008.

Erin Fitzgerald,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–8244 Filed 4–16–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 28, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 28, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 11th day of April 2008.

Erin FitzGerald,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 3/31/08 and 4/4/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63092	Sun Chemical Corporation (Union)	Cincinnati, OH	03/31/08	03/28/08
63093	Saint-Gobin Vetrotex America (Union)	Wichita Falls, TX	03/31/08	03/19/08
63094	J J's Mae, Inc. (State)	San Francisco, CA	03/31/08	03/28/08
63095	Western Union (Wkrs)	Bridgeton, MO	03/31/08	03/27/08
63096	Poly Vision Corporation (Comp)	Corona, CA	03/31/08	03/27/08
63097	Medtronic Microelectronics Center (Wkrs)	Tempe, AZ	03/31/08	03/27/08
63098	Ineos-Nova (Wkrs)	Belpre, OH	03/31/08	03/26/08
63099	WestPoint Home (Comp)	Elkin, NC	04/01/08	03/31/08
63100	Chillicothe Paper, Inc. (Comp)	Chillicothe, OH	04/01/08	04/01/08
63101	Modern Textile, Inc. (State)	Oakville, CT	04/01/08	03/31/08
63102	Robinson Manufacturing Company, Inc. (Wkrs)	Dayton, TN	04/01/08	03/31/08
63103	HD Supply, Inc. (Wkrs)	Columbus, GA	04/01/08	03/31/08
63104	Paris Accessories, Inc. (UNITE)	New Smithville, PA	04/01/08	03/24/08
63105	Bradenton Herald (Wkrs)	Bradenton, FL	04/01/08	03/25/08
63106	Brady Athletic, Inc. (Wkrs)	East Brady, PA	04/01/08	03/31/08
63107	Littel Fuse, Inc. (Comp)	Des Plaines, IL	04/01/08	03/28/08
63108	Guy Bennett Lumber Company (Wkrs)	Clarkston, WA	04/01/08	03/26/08
63109	Evergy, Inc. (Tecumseh Products Co.) (Wkrs)	Paris, TN	04/01/08	03/13/08
63110	Hanesbrands, Inc (Comp)	Advance, NC	04/02/08	02/18/08
63111	Brodnax Mills, Inc. (Wkrs)	Brodnax, VA	04/02/08	03/27/08
63112	Woverine Tube, Inc. (Comp)	Ardmore, TN	04/02/08	03/31/08
63113	Custom Metal Spinning, Inc. (State)	Paramount, CA	04/02/08	04/01/08
63114	Colgate-Palmolive (Comp)	Jeffersonville, IN	04/02/08	02/15/08
63115	Granite Knitwear, Inc. (Comp)	Granite Quarry, NC	04/02/08	04/01/08
63116	Dott Industries, Inc. (State)	Deckerville, MI	04/02/08	03/21/08
63117	Sroufe Healthcare Products, Inc. (Wkrs)	Ligonier, IN	04/02/08	04/01/08
63118	ARC Automotive, Inc. (AFLCIO)	Knoxville, TN	04/02/08	04/01/08
63119	Permacel, St. Louis Inc. (Union)	St. Louis, MO	04/02/08	03/31/08
63120	Honeywell Process Solutions (Comp)	Phoenix, AZ	04/03/08	03/10/08
63121	Fairchild Semiconductor (Comp)	South Portland, ME	04/03/08	04/02/08
63122	Chromcraft Revington, Inc. (Comp)	Delphi, IN	04/03/08	04/02/08
63123	Gerber Plumbing Fixtures, LLC (AFLCIO)	Kokomo, IN	04/03/08	03/26/08
63124	Berkline/Benchcraft LLC, Plant 8 (Wkrs)	Lenoir City, TN	04/03/08	04/01/08
63125	Currier Trucking Corporation (Comp)	Gorham, NH	04/03/08	03/25/08
63126	Teva Pharmaceuticals, USA (Comp)	Northvale, NJ	04/03/08	03/05/08
63127	Edscha Spartanburg (Comp)	Greer, SC	04/04/08	04/03/08
63128	Sun Chemical Corporation (Comp)	Hopkinsville, KY	04/04/08	04/02/08
63129	Warm Springs Forest Products Industries (Wkrs)	Warm Springs, OR	04/04/08	04/02/08
63130	Sea Gull Lighting (State)	Riverside, NJ	04/04/08	04/03/08
63131	Pfizer, Inc. (Wkrs)	Terre Haute, IN	04/04/08	04/03/08
63132	Honeywell International Inc./Aerospace (Wkrs)	Redmond, WA	04/04/08	03/26/08
63133	Mitch Murch's Maintenance Management (Wkrs)	Saint Louis, MO	04/04/08	03/27/08
63134	Dutch Mundy Chev., Inc. (Comp)	Independence, VA	04/04/08	04/03/08
63135	Leica Geosystems (Comp)	San Ramon, CA	04/04/08	04/02/08
63136	Netra Systems USA, Inc. (Comp)	Fayetteville, GA	04/04/08	03/20/08
63137	Quiksilver (Comp)	Huntington Beach, CA	04/04/08	03/28/08
63138	Prettl Electric Corporation (Comp)	Greenville, SC	04/04/08	04/03/08

[FR Doc. E8–8243 Filed 4–16–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,579; TA–W–61,579A]

Jockey International, Inc. Manufacturing Division Millen, GA; Including an Employee of Jockey International, Inc. Operating out of Greensboro, NC; Employed at Manufacturing Division Millen, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Findings of the Investigation

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 15, 2007 applicable to workers of Jockey International, Inc., Manufacturing Division, Millen, Georgia. The notice was published in the **Federal Register** on June 28, 2007 (72 FR 33516).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation has occurred involving an employee of the Millen, Georgia facility of Jockey International, Inc., paid and operating out of Greensboro, North Carolina. Mr. Harrison Thrasher provided safety services for the production of apparel cutting that is produced at the Millen, Georgia location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Greensboro, North Carolina office of Jockey International, Inc., located at the Millen, Georgia facility.

The intent of the Department's certification is to include all workers of Jockey International, Inc., Millen, Georgia, who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–61,579 is hereby issued as follows:

All workers of Jockey International, Inc., Manufacturing Division, Millen, Georgia (TA–W–61,579), including an employee in support of Jockey International, Inc., Manufacturing Division, Millen, Georgia operating out of Greensboro, North Carolina (TA–W–61,579A), who became totally or partially separated from employment on March 22, 2006, through June 15, 2009, are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of April 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8247 Filed 4–16–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,939; TA–W–62,939A]

Johnson Rubber Company, Including On-Site Leased Workers From Ryan Temps, Champion Staffing, SMI Professional, Tech Temps and Robert Half Management Resources, North Baltimore, OH; Johnson Rubber Company, Including On-Site Leased Workers From Ryan Temps, Champion Staffing, SMI Professional, Tech Temps and Robert Half Management Resources, Middlefield, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 14, 2008, applicable to workers of Johnson Rubber Company, including on-site leased workers from Ryan Temps and Champion Staffing, North Baltimore, Ohio and Middlefield, Ohio. The notice was published in the **Federal Register** on March 26, 2008 (73 FR 16063).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of rubber automotive, industrial, marine and military parts.

New information shows that leased workers of SMI Professional, Tech Temps and Robert Half Management Resources were employed on-site at the North Baltimore, Ohio and Middlefield, Ohio locations of Johnson Rubber Company. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of SMI Professional, Tech Temps and Robert Half Management Resources working on-site at the North Baltimore, Ohio and Middlefield, Ohio locations of the subject firm.

The intent of the Department's certification is to include all workers employed at Johnson Rubber Company, North Baltimore, Ohio and Middlefield, Ohio who were adversely affected by increased imports and by a shift in production to China and Mexico.

The amended notice applicable to TA–W–62,939 and TA–W–62,939A are hereby issued as follows:

All workers of Johnson Rubber Company, including on-site leased workers from Ryan Temps, Champion Staffing, SMI Professional, Tech Temps and Robert Half Management Resources, North Baltimore, Ohio (TA–W–62,939) and all workers of Johnson Rubber Company, including on-site leased workers from Ryan Temps, Champion Staffing, SMI Professional, Tech Temps and Robert Half Management Resources, Middlefield, Ohio (TA–W–62,939A), who became totally or partially separated from employment on or after March 1, 2007, through March 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of April 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8250 Filed 4–16–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,371]

Leach & Garner Company, Currently Known as Hallmark Sweet, Inc., North Attleboro, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 22,

2008, applicable to workers of Leach & Garner Company, North Attleboro, Massachusetts. The notice was published in the **Federal Register** on February 7, 2008 (73 FR 7319).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of findings for jewelry.

New information shows that in September 2007, Hallmark Sweet, Inc. purchased Leach & Garner Company and is currently known as Hallmark Sweet, Inc.

Accordingly, the Department is amending this certification to show that Leach & Garner Company is currently known as Hallmark Sweet, Inc.

The intent of the Department's certification is to include all workers of Leach & Garner Company, currently known as Hallmark Sweet, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–62, 371 is hereby issued as follows:

All workers of Leach & Garner Company, currently known as Hallmark Sweet, Inc., North Attleboro, Massachusetts, who became totally or partially separated from employment on or after October 26, 2006, through January 22, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of April 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8248 Filed 4–16–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,649]

Rowe Furniture, Inc. Including On-Site Leased Workers From Penske Logistics Elliston, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 25, 2006, applicable to workers of Rowe Furniture, Inc., Elliston, Virginia. The notice was published in the **Federal Register** on August 14, 2006 (71 FR 46518).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of upholstered living room furniture.

New information shows that leased workers of Penske Logistics were employed on-site at the Elliston, Virginia location of Rowe Furniture. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Penske Logistics working on-site at the Elliston, Virginia location of the subject firm.

The intent of the Department's certification is to include all workers employed at Rowe Furniture, Inc., Elliston, Virginia who were adversely affected by increased imports.

The amended notice applicable to TA–W–59,649 is hereby issued as follows:

All workers of Rowe Furniture, Inc., including on-site leased workers from Penske Logistics, Elliston, Virginia, who became totally or partially separated from employment on or after June 28, 2005, through July 25, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.'' I further determine that all workers of Rowe Furniture, Inc., Elliston, Virginia are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of April 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8246 Filed 4–16–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,495; TA–W–58,495A; TA–W–58,495B]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; the Hoover Company

In the matter of: The Hoover Company, a Subsidiary of Maytag Corporation, Currently Known as TTI Floor Care North America Floor Care Division, Main Plant, North Canton, Ohio; The Hoover Company, a Subsidiary of Maytag Corporation, Currently Known as TTI Floor Care North America Floor Care Division, Plant Two, Canton, Ohio; The Hoover Company, a Subsidiary of Maytag Corporation, Currently Known as TTI Floor Care North America Floor Care Division, Distribution Center, North Canton, Ohio; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 24, 2006, applicable to workers of The Hoover Company, a subsidiary of Maytag Corporation, Floor Care Division, Main Plant, North Canton, Ohio, Plant Two, Canton, Ohio and Distribution Center, North Canton, Ohio. The notice was published in the **Federal Register** on February 3, 2006 (71 FR 5895).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of vacuums and disposable vacuum cleaner bags and the distribution of those articles.

New information shows that TTI Floor Care North America purchased The Hoover Company in February 2007 and is currently known as TTI Floor Care North America.

Accordingly, the Department is amending this certification to show that The Hoover Company is currently known as TTI Floor Care North America.

The intent of the Department's certification is to include all workers of The Hoover Company, currently known as TTI Floor Care North America, Floor Care Division, Main Plant, Plant Two and Distribution Center who were

adversely affected by a shift in production of vacuums and disposable vacuum cleaner bags and the distribution of those articles to Mexico and China.

The amended notice applicable to TA–W–58,495 is hereby issued as follows:

All workers of The Hoover Company, a subsidiary of Maytag Corporation, currently known as TTI Floor Care North America, Main Plant, North Canton, Ohio (TA–W–58,495); Plant Two, Canton, Ohio (TA–W–58,495A), and Distribution Center, North Canton, Ohio (TA–W–58,495B), who became totally or partially separated from employment on or after August 28, 2005, through January 24 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of April 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8245 Filed 4–16–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,532; TA–W–62,532A; TA–W–62,532B]

The Hoover Company; Currently Known as TTI Floor Care North America; Floor Care Division; Main Plant; North Canton, OH; The Hoover Company; Currently Known as TTI Floor Care North America; Floor Care Division; Plant Two; Canton, OH; The Hoover Company; Currently Known as TTI Floor Care North America; Floor Care Division; Distribution Center; North Canton, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 6, 2008, applicable to workers of The Hoover Company, Floor Care Division, Main Plant, North Canton, Ohio, Plant Two, Canton, Ohio and Distribution Center, North Canton, Ohio. The notice was published in the **Federal Register** on February 22, 2008 (73 FR 9835).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of vacuums and disposable vacuum cleaner bags and the distribution of those articles.

New information shows that TTI Floor Care North America purchased The Hoover Company in February 2007 and is currently known as TTI Floor Care North America.

Accordingly, the Department is amending this certification to show that The Hoover Company is currently known as TTI Floor Care North America.

The intent of the Department's certification is to include all workers of The Hoover Company, currently known as TTI Floor Care North America, Floor Care Division, Main Plant, Plant Two and Distribution Center who were adversely affected by a shift in production of vacuums and disposable vacuum cleaner bags and the distribution of those articles to Mexico and China.

The amended notice applicable to TA–W–62,532 is hereby issued as follows:

All workers of The Hoover Company, currently known as TTI Floor Care North America, Main Plant, North Canton, Ohio (TA–W–62,532); Plant Two, Canton, Ohio (TA–W–62,532A), and Distribution Center, North Canton, Ohio (TA–W–62,532B), who became totally or partially separated from employment on or after January 25, 2008, through February 6, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of April 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8249 Filed 4–16–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,997]

Bio-Rad Laboratories, Waltham, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 13, 2008 in response to a petition filed by a company official on behalf of workers at Bio-Rad Laboratories, Waltham, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 8th day of April 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8251 Filed 4–16–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,072]

Jockey International, Inc. Greensboro, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 26, 2008 in response to a worker petition filed on behalf of workers at Jockey International, Inc., operating out of Greensboro, North Carolina but working in Millen, Georgia.

The petitioning group of workers is covered by an active certification of workers at Jockey International, Inc. Manufacturing Division, Millen, Georgia, as amended (TA–W–61,579A) which expires on June 15, 2009. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of April 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8242 Filed 4–16–08; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and Four of the Board's Committees

TIMES AND DATES: The Legal Services Corporation Board of Directors and four of the Board's Committees will meet on April 25–26, 2008 in the order set forth in the following schedule, with each meeting commencing within 10 minutes after adjournment of the immediately preceding meeting.

PUBLIC OBSERVATION BY TELEPHONE: Members of the public who wish to listen to the open portions of the meetings live may do so by following

the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. Comments from the public may from time to time be solicited by the presiding Chairman.

Call-in Directions for Open Sessions

Friday, April 25, 2008

- Call toll-free number 1–888–831–6080;
- When prompted, enter the following numeric pass code: 23698;
- When connected to the call, please ''MUTE'' your telephone immediately.

Saturday, April 26, 2008

- Call toll-free number 1–888–913–9965;
- When prompted, enter the following numeric pass code: 58990;
- When connected to the call, please ''MUTE'' your telephone immediately.

Meeting Schedule

Friday, April 25, 2008

1:30 p.m.[1]

1. Provision for the Delivery of Legal Services Committee (Provisions Committee).
2. Operations & Regulations Committee.

Saturday, April 26, 2008

9:00 a.m.

3. Finance Committee.
4. Audit Committee.
5. Annual Performance Reviews Committee.
6. Board of Directors.

LOCATION: The Marriott Hotel, 3233 Northwest Expressway, Oklahoma City, Oklahoma.

STATUS OF MEETINGS: Open, except as noted below.

- *April 26, 2008 Finance Committee Meeting*—A portion of the Committee's meeting may be *closed* to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session to receive a report/briefing on staff's assessment of proposals submitted by companies competing for selection to serve as Administrator of the 403(b) Thrift Plan (Plan) for LSC employees, as well as to permit the Committee to conduct confidential interviews of representatives of two of the competing companies. The staff report/briefing is not subject to the Government in the Sunshine Act or the Legal Services Corporation regulations implementing the Sunshine Act.[2] The closing is authorized by the relevant provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(4) and (c)(9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(c) and (g). A *verbatim* written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provision(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), and the corresponding provision of LSC's implementing regulation, 45 CFR 1622.5(e), will not be available for public inspection. The transcript of any portions not falling within the cited provisions will be available for public inspection. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.
- *April 26, 2008 Performance Reviews Committee Meeting*—A portion of the Committee's meeting may be *closed* to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session to Consider and act on establishment of procedures and a protocol for the annual performance review of the LSC Inspector General. The closing will be authorized by the relevant provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2), and the corresponding provision of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a). A *verbatim* written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provision(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), and the corresponding provision of LSC's implementing regulation, 45 CFR 1622.5(e), will not be available for public inspection. The transcript of any portions not falling within the cited provisions will be available for public inspection. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.
- *April 26, 2008 Board of Directors Meeting*—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to consider and perhaps act on the General Counsel's report on potential and pending litigation involving LSC. A *verbatim* written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(10), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(h), will not be available for public inspection. The transcript of any portions not falling within the cited provisions will be available for public inspection. A copy of the General Counsel's Certifications that the closings are authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Friday, April 25, 2008

Provision for the Delivery of Legal Services Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of January 25, 2008.
3. Staff Update on activities implementing the *LSC Private Attorney Involvement Action Plan—Help Close the Justice Gap: Unleash the Power of Pro Bono*.
4. Staff Update on LSC Technology Criteria for Legal Aid Offices.
5. Presentation on Native American Delivery and Funding.
   - Representatives of Native American Indian Legal Services (NAILS).
6. Consider and act on Provision for the Delivery of Legal Services Committee charter to propose to the Board of Directors for adoption.
7. Chairman's Update on Provisions Committee 2008 Agenda.
8. Public comment.
9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

Operations & Regulations Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's January 25, 2008 meeting.
3. Approval of the minutes of the Committee's January 26, 2008 meeting.
4. Consider and act on initiation of rulemaking to adopt ''lesser sanctions''.
   a. Staff report.
   b. OIG comment.
   c. Public comment.
5. Consider and act on Operations & Regulations Committee charter to propose to the Board of Directors for adoption.
6. Staff report on development of LSC's in-house Compliance Program.
7. Staff report on LSC's Continuation of Operations Plan (''COOP'').

[1] Please note that all times in this notice are *Mountain Time*.

[2] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

8. Staff report on LSC's risk management plan.

9. Public comment.

10. Consider and act on other business.

11. Consider and act on adjournment of meeting.

Saturday, April 26, 2008

Finance Committee

Agenda

Open Session

1. Approval of agenda.

2. Approval of the minutes of the Committee's meeting of January 26, 2008.

3. Consider and act on adjustments to the Consolidated Operating Budget for FY 2008 and recommend Resolution #2008–004 to the full Board.

- Presentation by David Richardson, Treasurer/Comptroller.
- Comments by Charles Jeffress.

4. Presentation on LSC's Financial Reports for the first six months of FY 2008.

- Presentation by David Richardson, Treasurer/Comptroller.
- Comments by Charles Jeffress, Chief Administrative Officer.

5. Report on FY 2009 appropriations process.

- Presentation by John Constance, Director, Office of Government Relations and Public Affairs.

6. Consider and act on Finance Committee charter to propose to the Board of Directors for adoption.

Closed Session

7. Consider and act on a recommendation to the Board for a new plan administrator for the 403(b) Thrift Plan for Employees of LSC, Resolution 2008–005.

- Introduction by Charles Jeffress.
- Presentation by the Nationwide Team, Ivette Dominguez, Regional Vice President, Private Sector Retirement Plans, Nationwide Financial; Ralph Prisco, President, Long Island Employee Benefits Group; and Thomas Gletner, SunTrust Investment Services.
- Presentation by the American United Life/One America Team, David Frost, Regional Sales Director, AUL/One America; and David Ponder, Ponder Financial Group, Financial Adviser.

Open Session

8. Public comment.

9. Consider and act on other business.

10. Consider and act on adjournment of meeting.

Audit Committee

Agenda

Open Session

1. Approval of agenda.

2. Report of the Committee Chairman on the Board's actions regarding establishment of the Audit Committee.

3. Report on Board Chairman's appointments to the Audit Committee.

4. Committee Chairman's summary of the Audit Committee's Charter.

5. Consider and act on the process used by the Inspector General to select and/or retain the Corporation's external auditor.

6. Consider and act on how the work of the Office of Inspector General will assist and complement the work of the Audit Committee.

7. Comments by LSC's Independent Public Accountant (''IPA'') regarding the IPA's perspective on the Audit Committee mission.

8. Consider and act on development of a plan of action for the Committee.

9. Public comment.

10. Consider and act on other business.

11. Consider and act on adjournment of meeting.

Performance Reviews Committee

Agenda

Closed Session

1. Approval of agenda.

2. Consider and act on establishment of procedures and a protocol for the annual performance review of the LSC Inspector General.

3. Consider and act on other business.

4. Consider and act on adjournment of meeting.

Board of Directors

Agenda

Open Session

1. Approval of agenda.

2. Approval of minutes of the *Board's* Open Session meeting of January 26, 2008.

3. Approval of minutes of the *Board's* Open Session *telephonic* meeting of February 20, 2008.

4. Approval of minutes of the *Board's* Open Session telephonic meeting of March 24, 2008.

5. Consider and act on delegation to Chairman of authority to assign Directors to the various committees of the Board and to appoint each committee's chairperson.

6. *Chairman's* Report.

7. *Members'* Reports.

8. *President's* Report.

9. *Inspector General's* Report.

10. Consider and act on the report of the *Provision for the Delivery of Legal Services Committee.*

11. Consider and act on the report of the *Finance Committee*.

12. Consider and act on the report of the *Operations & Regulations Committee*.

13. Consider and act on the report of the *Audit Committee*.

14. Consider and act on the report of the Board's *2008 Ad Hoc Committee* Liaison.

15. Consider and act on recommendations made to the Board in the Government Accountability Office report on LSC governance.

a. Develop a plan for providing a regular training program for board members that includes providing updates or changes in LSC's operating environment and relevant governance and accountability practices.

b. Implement a periodic self-assessment of the Board's, the committees', and each individual member's performance for purposes of evaluating whether improvements can be made to the board's structure and processes.

c. Develop and implement procedures to periodically evaluate key management processes, including at a minimum, processes for risk assessment and mitigation, internal control, and financial reporting.

d. Establish and implement a comprehensive orientation program for new board members to include key topics such as fiduciary duties, IRS requirements, and interpretation of the financial statements.

e. Adopt Board committee charters.

16. Consider and act on proposed Protocol for Board member access to Corporation records.

17. Public comment.

18. Consider and act on other business.

19. Consider and act on whether to authorize an executive session of the *Board* to address items listed below under *Closed Session*.

Closed Session

20.Approval of minutes of the *Board's* Executive Session of January 26, 2008.

21. Consider and act on General Counsel's report on potential and pending litigation involving LSC.

22. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual

and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: April 15, 2008.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 08–1151 Filed 4–15–08; 3:30 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–529]

Arizona Public Service Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Facility Operating License No. STN 50–529 to Arizona Public Service Company (APS or the licensee) for operation of the Palo Verde Nuclear Generating Station (Palo Verde), Unit 2, located in Maricopa County, Arizona.

The proposed amendment in the licensee's application dated April 10, 2008, would revise Technical Specification (TS) 3.5.5, Refueling Water Tank (RWT), to increase the minimum required RWT level indications and the corresponding borated water volumes in TS Figure 3.5.5–1, ''Minimum Required RWT Volume,'' by 3 percent. This change will ensure that there is adequate water volume available in the RWT to ensure that the engineered safety feature (ESF) pumps and the new containment recirculation sump strainers will meet their design functions during loss-of-coolant accidents (LOCAs).

This condition is exigent for Unit 2, as it entered into a refueling outage on March 29, 2008, and during that outage the new containment sump strainers will be installed as part of the licensee's commitments related to NRC Generic Letter 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized-Water Reactors.'' Without this amendment, the necessary modifications cannot be completed before startup from the refueling outage. Palo Verde is scheduled to restart on or about May 11, 2008.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would raise the RWT minimum level by 3% to ensure that there is adequate water volume available at the containment recirculation sumps for the limiting small break LOCA scenario for submergence of the new strainer designs that are being installed in Unit 2 in the spring 2008 outage. The new strainers are designed and tested to operate submerged at the start of recirculation actuation post-LOCA. This change ensures that the level of water at the strainers supports this assumption of the design.

The RWT water volume is not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

The effect on containment flood level, equipment qualification, and containment sump pH [potential of hydrogen] remains within the limits assumed in the design and accident analyses. The calculated maximum containment flood level is based on the RWT water level associated with the bottom of the RWT overflow nozzle. This change does not revise the location of the RWT overflow nozzle and there is no change in the calculated maximum flood level. As a result, the proposed change has no impact on the qualification of equipment above the maximum containment flood level. For the same reason the impact of the proposed change on post-LOCA sump pH is bounded by the current analysis for post-LOCA sump pH. In that analysis, the calculated minimum post-LOCA sump pH is based on the maximum RWT water level associated with the bottom of the RWT overflow nozzle. The maximum flood level is not affected by this change. In addition, the change is conservative with respect to the calculated maximum post-LOCA sump pH since it is increasing the minimum required RWT volume.

The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change does not involve a physical alteration of the plant (*i.e.*, no new or different components or physical changes are involved with this change) or a change in the methods governing normal plant operation. The change does not alter any assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to raise the required RWT minimum water volume does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside of the design basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, a person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary

that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

For further details with respect to this exigent license application, see the application for amendment dated April 10, 2008, from Arizona Public Service Company which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of April, 2008.

For the Nuclear Regulatory Commission.

Michael T. Markley,

Senior Project Manager, Plant Licensing Branch LPL4, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

Conduct of New Reactor Licensing Proceedings; Final Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC or the Commission) is adopting a statement of policy concerning the conduct of new reactor licensing proceedings.

DATES: This policy statement becomes effective April 17, 2008.

FOR FURTHER INFORMATION CONTACT: Robert M. Weisman, Senior Attorney, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1696, e-mail *Robert.Weisman@nrc.gov*.

SUPPLEMENTARY INFORMATION: On June 11, 2007 (72 FR 32139), the Commission published in the **Federal Register** a request for public comment on the draft statement of policy on Conduct of New Reactor Licensing Proceedings (draft Policy Statement). The Commission received eight letters transmitting comments on the draft Policy Statement by the deadline set in the June 11, 2007, notice for receipt of comments. Commenters included a law firm (Morgan Lewis on behalf of five energy companies), a lawyer (Diane Curran), two advocacy groups, (Beyond Nuclear/Nuclear Policy Research Institute (BN/NPRI) and the Union of Concerned Scientists (UCS)), an industry organization (the Nuclear Energy Institute (NEI)), a vendor (GE–Hitachi Nuclear Energy), and one individual energy company (UniStar Nuclear)(two letters). BN/NPRI endorsed Ms. Curran's comments, and UCS incorporated them by reference in the UCS comments. Similarly, GE–Hitachi and UniStar endorsed the NEI comments.

The comments fell primarily in the following three categories. First, many comments related to 10 CFR 2.101(a)(5), which permits an applicant to submit its application in two parts filed no more than eighteen months apart. The comments were primarily concerned with whether the NRC should issue a Notice of Hearing (required by 10 CFR 2.104) for each part of the application or just one Notice of Hearing when the application is complete. Second, many comments related to the NRC's consideration of applications that propose to build and operate reactors of identical design (except for site-specific elements). The comments addressed the implementation of the ''design-centered review approach'' in the NRC Staff's (Staff) review of the applications and the adjudicatory proceedings on the applications before the Atomic Safety and Licensing Board (Licensing Board). Third, many comments requested rulemaking to implement a variety of measures that the commenters believe desirable or necessary for the effectiveness or efficiency of the review or adjudicatory processes. Below, the Commission summarizes and responds to the comments beginning with these three categories of comments. Discussion of additional comments follows. In response to the comments, the Commission has revised the policy statement in several respects, as noted below. The Commission has also corrected the Policy Statement or added explanatory text in a few instances.

Comments on Notice of Hearing

Comment: The Commission should modify the final Policy Statement to provide that the NRC will issue a Notice of Hearing for the complete partial Combined License Application (hereinafter COLA) ''as soon as practicable'' after the NRC dockets that portion of the COLA, unless the applicant affirmatively requests that the Notice of Hearing be issued after the entire COLA is docketed. (NEI 2, Morgan Lewis 1, UniStar 1)

The commenters state that the approach they suggest will lessen the burdens on all parties. Specifically, these commenters submit that a Notice of Hearing should be issued upon the docketing of the first part of an application submitted under 10 CFR 2.101(a)(5) so that the hearing on that portion of the application may be completed sooner, thus providing an applicant the opportunity to shorten the critical path for the licensing proceeding. These commenters also state that the proposed approach ''smoothes'' peak resource demands for all parties, provides for earlier public participation, would not call for different NRC staff support or different Staff or Licensing Board reviews, minimizes the likelihood of potential new issues arising late in the review process, would not affect any person's substantive rights, and is consistent with the NRC intent to publish a separate Notice of Hearing on a request for a limited work authorization (LWA). Further, these commenters indicated that docketing one part of an application and then waiting up to 18 months to issue the Notice of Hearing cannot be considered to result in issuing the notice ''as soon as practicable'' after docketing, as required by 10 CFR 2.104(a). These commenters also state that the draft Policy Statement approach of normally issuing only one Notice of Hearing appears to ignore NRC precedent for adjudication of safety and environmental issues on separate hearing tracks. One commenter states that issuing separate notices focuses all parties on results, not process, while another asserts that the draft Policy Statement, as written, discourages early application submission and causes delay in the licensing process.

UniStar bases its comments on its plans to submit the environmental portion of its COL application first, in accordance with § 2.101(a)(5), and provides the following additional comments. UniStar believes issuing a Notice of Hearing in connection with the first part of the application docketed provides an earlier opportunity for public participation on environmental matters, offers the Staff an early opportunity to consider and address environmental issues unique to COLs, and lessens the potential for the NRC environmental review to be ''critical path'' for the UniStar application.

NRC Response: The NRC does not believe that an overall benefit can reasonably be predicted to derive from issuing separate Notices of Hearing for separate portions of applications filed pursuant to 10 CFR 2.101(a)(5). The assertion that issuing two Notices of Hearing will provide an applicant the opportunity to shorten the critical path for a licensing proceeding is speculative. The nature and complexity of contentions that may be raised with respect to the safety and environmental aspects of any application may vary considerably. Moreover, while an earlier, separate Notice might be advantageous to an applicant by allowing potential intervenors to raise their concerns early and thus allow the applicant more time to consider the gravity of those concerns and provide information to the staff to address them, if appropriate, we do not believe those possible advantages overcome the inefficiencies that could be introduced into the NRC's internal review and hearing processes as well as the potential burden on the resources of the advocacy community to monitor and respond to multiple Notices of Hearing.

Industry commenters assert that issuing separate notices would not impair the substantive rights of any party, and is consistent with the practice established in the LWA rule and previous licensing proceedings. The Commission agrees that no person's substantive rights would be impaired if either a single Notice of Hearing is issued on a complete application, or if two such notices are issued on parts of an application submitted under 10 CFR 2.101(a)(5). In this respect, the two procedures are equivalent. However, in the case of a request for an LWA, there is a clear potential benefit—issuance of an LWA to permit an applicant to begin certain safety-related construction activities before a COL is issued—not just a more nebulous ''smoothing'' out of resource demands, to balance against the potential negative impacts noted above.

The industry commenters point to a proceeding in which a Notice of Hearing was issued for a single part of an application relating solely to antitrust matters. *See Pacific Gas & Electric Co.* (Stanislaus Nuclear Project, Unit 1), LBP–83–2, 17 NRC 45, 47 (1983). The requirements of 10 CFR 50.33a that applied in that proceeding, however, explicitly required submission of antitrust information in advance of the rest of the application, presumably because litigation of antitrust matters before the Licensing Boards were virtually always the lengthiest portion of a licensing proceeding. See 10 CFR 50.33a (1983). As described above, that rationale does not apply here. Similarly, the fact that in some proceedings safety and environmental matters were considered on separate tracks, based on the admitted contentions, does not present a rationale for issuing separate Notices of Hearing for such matters. Specifically, hearings on admitted safety and environmental contentions may proceed on separate tracks, if the presiding officer finds that this is warranted. The advantages derived from establishing such separate hearing tracks can be obtained without issuing separate notices for each part of an application submitted under § 2.101(a)(5).

Accordingly, the Commission does not support issuing a separate Notice of Hearing on each part of an application filed under 10 CFR 2.101(a)(5). With respect to the additional issues UniStar raises that are unique to its application, and which are summarized above, the Commission does not believe it appropriate to address such application-specific concerns in responses to comments on a generally applicable policy statement such as this one. The comments do not warrant changes in the Policy Statement.

Comment: Why not, in the name of efficiency and fairness, wait until the application process is complete before holding a hearing—one hearing—on a completed design and completed application for a specific reactor site? (UCS 1, Curran 2). The Commission has previously recognized the unfairness of piecemeal litigation governed by a license applicant's indecision about whether to pursue a project. The Commission should redraft its policy statement to ensure that COL hearings will be conducted in a manner that is fair to all parties (Curran 4).

In essence, the commenter is objecting to the Commission's proposal to consider exemptions to the requirements of § 2.101 if the granting of such exemptions will further the design centered review approach. The commenter indicates that such exemptions will result in issuing two rather than one Notice of Hearing on each complete application, and will overtake the Commission's stated intention to issue just one Notice of Hearing on each complete application in the absence of the advantages of the design centered review approach. The

commenters indicate that under the design-centered approach, intervenors will be forced to participate in ''abstract'' proceedings in order to protect their rights, and that this will waste the intervenors' resources. Further, the commenters assert that such proceedings may subject them to abusive litigation tactics, since an applicant could request consideration of one design pursuant to an exemption from § 2.101(a)(5), and then drop that design in favor of another upon filing the remaining portion of the application. They conclude that potential intervenors will not be able to prioritize the most important issues that should be raised with respect to a proposed new plant on a particular site.

NRC Response: The commenters misapprehend the effect of an exemption from § 2.101 that would further the design-centered review approach. Such an exemption would not result in an ''abstract'' application. Rather, the applicant would, in its application, request approval to construct and operate a particular facility at a particular site. Prospective intervenors will not need to guess what plant might be described in an application for a COL that could affect them, nor will they need to participate in proceedings on proposed reactors that do not affect their interests.

Further, exemptions from § 2.101 in furtherance of the design-centered review approach would not result in litigation of design matters that an individual applicant might readily change. The point of allowing such a procedure is to permit the Staff and the Licensing Board to consider the standard portions of an incomplete application submitted pursuant to an exemption from § 2.101 together with other applications involving the same design or operational information. An individual applicant obtains the benefits of participating in such a proceeding by relinquishing some of its ability to change that information.

Although the Commission notes that established doctrines of repose (res judicata, collateral estoppel) apply once an adjudication is finally decided, prospective intervenors need not seek to participate in proceedings unrelated to their locale by virtue of the Policy Statement provisions discussing possible exemptions from § 2.101.

With respect to the concern that an applicant might decide to substitute one design for another in an application, modify its proposal, or decline to complete or pursue an application, and thus render any hearings related to those aspects of an application moot, that possibility exists whether or not an applicant has sought an exemption from § 2.101. For example, it may become apparent during the course of the NRC staff review that the proposed plant is not acceptable for the proposed site. Accordingly, the Commission concludes that these comments do not warrant changes to the Policy Statement.

The Commission notes that UCS, in connection with its comment, identified a confusing sentence in the draft Policy Statement to the effect that the NRC ''may give notice'' with respect to a complete application. This sentence has been revised to read that the NRC ''will give notice'' with respect to a complete application.

Comments on Design-Centered Review Approach

Comment: The proposed policy appears to relax or abandon the requirement for reliance on design certifications, allowing license applicants to depart from certified designs in license applications, and then forcing the consolidation of hearings where the applications appear to have something in common. In this respect, the policy seems intended to maximize the rigidity of design certification where intervenors' interests are at stake, and maximize flexibility where license applicants' interests are at stake. The policy should be consistent for both intervenors and applicants. (Curran 3, UCS 1, BY/NPRI)

NRC Response: Part 52 has never required an applicant for a COL to reference a certified design. Rather, a COL applicant has always had the option of requesting a COL for a design that is not certified under Part 52, Subpart B (a ''custom'' plant). See 10 CFR 52.79. Similarly, Part 52 has always provided for exemptions or departures from a certified design. *See* 10 CFR Part 52, Appendices A, B, C, and D, Section VIII. The draft Policy Statement offered guidance on the effect these provisions might have in the context of an adjudication consolidated to take advantage of the design-centered review approach. The design-centered review approach is an effort to encourage applicants to adopt identical approaches to issues, which should increase reliance on standard design certifications. Moreover, multiple applicants could choose the same uncertified design (*e.g.*, a gas-cooled reactor), which the NRC could review using the design-centered approach. This circumstance would be consistent with the Commission's policy encouraging greater standardization, albeit not via design certification.

With respect to whether proceedings should be consolidated, the draft Policy Statement does not *require* consolidation. Rather, it provides, among other things, that the Chief Judge of the Atomic Safety and Licensing Board Panel (ASLBP) should do so only if consolidation will not impose an undue burden upon the parties. Further, the draft Policy Statement recommends that applicants and intervenors alike agree on a lead representative. The Policy Statement does not treat intervenors and applicants inconsistently in this regard.

Finally, the draft Policy Statement does not state that consolidation is appropriate when ''applications appear to have something in common.'' Rather, the Commission is suggesting that intervenors, applicants, and the NRC alike may save and appropriately focus resources by litigating matters relating to applications for identical designs in consolidated proceedings. Our rules of practice have long provided for the possibility of consolidation of issues and parties.

Comment: Encouraging generic ''variances and exemptions'' from certified designs and endorsing the notion that ''security'' considerations in reactor siting are ever ''identical'' from one site to another flies in the face of the commonly accepted view that each piece of land is unique. To encourage licensees to seek variances, exemptions, and generic licenses based on the premise that only components are at issue without reference to where they are located is, in a Post-9/11 world, burying one's head in the sand. If the Commission needs to encourage, under the guise of a policy statement, myriad exemptions to the new Part 52 rules, the new Part 52 rules patently need revision. (UCS 2)

NRC Response: The Commission of course recognizes that certain aspects of security are site-specific. The Commission has not ''endorsed the notion that 'security' considerations in reactor siting are * * * 'identical' from one site to another[,]'' as suggested by the commenter. Nonetheless, certified designs include certain features or design elements directed to security and safeguards, and these design matters will be common at sites referencing the design certification. The Policy Statement is focused on ''components'' in this regard because it is focused on the design-centered approach. The Policy Statement's focus should not be read to exclude site-specific issues from the scope of NRC review. The Commission does not believe it is encouraging a ''myriad'' of exemptions by this Policy Statement. The Statement identifies limited circumstances under which an exemption to Part 2 may be

entertained or granted. The regulations in Part 52 have long accommodated the need for exemptions to design certification rules in defined circumstances. See 10 CFR part 52, Appendices A, B, C, and D, Section VIII.

Comment: The final Policy Statement should more clearly explain the parameters or necessary conditions for consolidation. (NEI 3, Morgan Lewis 4)

NRC Response: Whether separate proceedings should be consolidated depends on their particular circumstances, and is within the discretion of the presiding officers in the proceedings, as currently set forth in Part 2. See 10 CFR 2.317. The draft Policy Statement adequately explains how the design-centered review approach may be appropriately factored into the presiding officers' decision on consolidation. Whether two applications are sufficiently close in time to warrant consolidation depends on the particular facts involved. No modification to the Policy Statement is warranted.

Comment: The Commission should clarify that consolidation of hearings on identical portions of the COL application is not required to obtain the NRC staff's design-centered review. While the use of Subpart D is permissible, it is not required and should not be presumed. (NEI 4, Morgan Lewis 4)

NRC Response: The Commission believes that the Policy Statement already makes clear that consolidation of hearings is not required to obtain the NRC staff's design-centered review. Without consolidation of hearings, however, some of the benefits of the design-centered review approach may not be realized. Therefore, the Policy Statement presumes the use of Subpart D because the Commission believes that such use will offer benefits not otherwise available. A particular applicant's choice not to seek the use of Subpart D will mean that such benefits will not be available to that applicant.

Comment: The draft Policy Statement should treat COL applications that reference applications for design certification amendments in a manner comparable to COL applications that reference design certifications. (Morgan Lewis 3, NEI 5)

NRC Response: The draft Policy Statement explicitly discusses applications for design certification. The Commission believes that discussion also encompasses an application for an amendment to a design certification, and the Policy Statement need not be changed.

Comment: The Policy Statement should direct the Licensing Board to deny a contention in a COL proceeding if the contention addresses a matter subject to a design certification rulemaking, rather than holding the contention in abeyance and denying it later upon adoption of the final design certification rule. (NEI 6)

NRC Response: While the approach NEI suggests is consistent with the Commission decisions cited in the draft Policy Statement, the Commission believes that an application for design certification calls for a different approach. An applicant for a COL may choose to pursue its application as a custom design if, for example, the review of an application for design certification originally referenced is delayed. In such a case, the Commission believes it inefficient to require previously admitted intervenors to justify, for a second time, admission of contentions which address aspects within the scope of the design certification rulemaking. Holding these contentions in abeyance instead of denying them resolves this problem. Accordingly, the Commission has determined to leave the Policy Statement unchanged in this regard.

Comment: The Commission should clarify the statement in section B.3 of the Policy Statement that ''[i]f initial COL applicants referencing a particular design certification rule succeed in obtaining COLs, the Commission fully expects subsequent COL applicants to reference that design certification rule.''

NRC Response: The Commission has clarified the sentence by stating that if the NRC grants an initial application referencing a design certification rule, the Commission believes it is likely that subsequent applications referencing that rule will be filed.

Comments Relating to Rulemaking

Comment: The NRC should ensure consistency in its rules by conforming 10 CFR 51.105, which contains mandatory findings on NEPA matters in uncontested proceedings, to 10 CFR 2.104, which does not specify the findings to be made. (Morgan Lewis 6)

NRC response: This proposal would involve rulemaking, which is beyond the scope of the development of this Policy Statement. Because this matter has been raised as a comment on this Policy Statement, the agency is not treating the comment as a petition for rulemaking under § 2.802. If the commenter wishes the agency to undertake such a consideration, the commenter should file such a petition. The Commission would note that the commenter's proposed change was considered in the development of the final Part 52 rulemaking, but was rejected for several reasons. Such a change would have represented a fundamental change to the NRC's overall approach for complying with NEPA, in which the agency's record of decision consists of the presiding officer's findings with respect to NEPA, as required by Section 51.105. The Commission did not believe it made sense to modify the NRC's approach in one specific situation—the issuance of combined licenses—without considering the implications or desirability of adopting a global change to Part 51 with respect to the agency's NEPA's procedures. Moreover, the Commission believed that such a change in the NRC's NEPA compliance procedures should be subject to a notice and comment process and did not want to further delay agency adoption of a final part 52 rule.

Comment: The NRC should revise 10 CFR 2.101(a)(5) to permit the first part of a phased application to consist solely of the environmental report plus the general administrative information specified in § 50.33(a) through (e). It is not necessary for the NRC to have complete seismic and other siting information, plus financial and emergency planning information, to review an environmental report. (Morgan Lewis 7)

NRC response: First, this proposal would require a change to Commission rules, which is beyond the scope of the development of this Policy Statement. Second, with respect to the commenter's proposal that siting (which includes seismic) information is not necessary for the first part of a phased COL application (even if the rest of the first part is the environmental report), the Commission does not find persuasive this argument for omitting siting information.

The Commission requirements governing site safety are based upon the Atomic Energy Act (AEA). The NRC's National Environmental Policy Act (NEPA) review responsibilities do not expand its AEA authority, but are complementary thereto. Consequently, there is no need for a NEPA siting review absent consideration of site safety under the AEA. Regarding site safety, the information an applicant must submit to satisfy the requirements of 10 CFR 2.101(a)(5) addresses the suitability of the site with respect to manmade and natural hazards (including seismic information) and potential radiological consequences of postulated accidents and the release of fission products. Furthermore, the site characteristics must comply with 10 CFR part 100, ''Reactor Site Criteria.'' Additional safety elements required in a

siting determination include information on emergency preparedness and security plans. Administrative information, including the protection of sensitive information is necessary to fulfill requirements under the AEA. The Commission considers that much of the above site safety information may be of use in informing the Commission NEPA review.

Because the commenter's suggestion that the agency undertake rulemaking has been raised as part of the comment process on this Policy Statement, the agency is not treating the comment as a petition for rulemaking under 10 CFR 2.802. If the commenter continues to believe the agency should consider rulemaking on this matter, the agency would suggest the commenter file such a petition.

Comment: The final Policy Statement should direct the NRC staff to consider, on a case-by-case basis, whether generic or design-specific issues could be addressed through rulemaking. (GE–Hitachi Nuclear Energy 1, NEI 10)

NRC Response: The Commission does not believe that a direction to the NRC staff to undertake rulemaking, which is an internal agency matter, is an appropriate subject for a policy statement. The Commission has, however, directed the NRC staff, in consultation with the Office of the General Counsel, to consider initiating rulemakings in appropriate circumstances to address issues that are generic to COL applications. See SRM COMDEK–07–0001/COMJSM–07–0001—Report of the Combined License Review Task Force (June 22, 2007) (ADAMS Accession No. ML0717601090). Accordingly, the Commission does not see any further benefit in duplicating this Commission direction in a policy statement.

Comment: The NRC should institute notice-and-comment rulemaking to provide for meaningful public participation in the licensing hearing process under Subpart L of Part 2, including full and fair discovery procedure and cross-examination of adverse witnesses. (UCS 3)

NRC Response: The Commission does not agree that its current requirements in 10 CFR Part 2, Subpart L, governing discovery and cross-examination, are unfair to any potential party in an NRC adjudication, nor does the Commission believe that Part 2 fails to provide for meaningful public participation in the licensing hearing process. The Commission addressed the fairness and expected benefits of the reconstituted discovery process in Subpart L in the statement of considerations for the final 2004 revisions to Part 2. See 69 FR 2182 (January 14, 2004) upheld by *Citizens Awareness Network, Inc.* v. *U.S., 391 F.3rd 338* (1st Cir. 2004). The discovery process provides for mandatory disclosures by all parties of information relating to admitted contentions, and Staff preparation of a hearing file. Furthermore, cross-examination is allowed or may be allowed by the presiding officer under those circumstances in which the Commission has determined that cross-examination would be best-suited to result in the timely development of a record sufficient to inform a fair decision by the presiding officer. The commenter provided nothing other than the generalized assertion that the new procedures are unfair or would preclude meaningful public participation in the licensing hearing process. Because the commenter's suggestion that the agency undertake rulemaking has been raised as part of the comment process on this Policy Statement, the agency is not treating the comment as a petition for rulemaking under 10 CFR 2.802. If the commenter continues to believe the agency should consider rulemaking on this matter, the agency would suggest the commenter file such a petition.

Comment: The NRC should decrease the time periods in the 10 CFR part 2 Milestone Schedules to further streamline the hearing process and promote more timely hearings on ESP and COL applications, by (1) decreasing the 175 day period between issuance of the SER and final EIS and the start of the evidentiary hearing; and (2) reducing from 90 to 60 days the period for the presiding officer to issue its initial decision following the end of the evidentiary hearing. (NEI 13)

NRC Response: The Commission does not agree that the Model Milestones in Appendix B to 10 CFR part 2 should be modified to adopt the two changes suggested by the commenter. The 175 day time period provides for, among other things, scheduling and holding a pre-hearing conference, issuance of the presiding officer's order following the prehearing conference, mandatory disclosures, preparation of summary disposition motions, issuance of presiding officer orders on such motions, preparation of pre-filed written testimony, suggested presiding officer questions based upon the pre-filed testimony, and any motions for cross-examination together with cross-examination plans. It may well be that, with the particular parties involved or matters at issue in any individual case, the schedule can be shortened by the presiding officer. But, given the activities outlined above, the Commission does not believe that the 175 day period is unreasonable or should be significantly shortened at this time.

The Commission believes that the 90 day period provided for issuance of a presiding officer decision is reasonable, given the likelihood—as described above—that the first set of combined license application hearings may be complex and raise issues of first impression for the NRC. If, however, the issues to be addressed in an initial decision are small in number, simple in nature and lack complexity, enabling the presiding officer to issue the initial decision in a shorter period of time, the Commission expects the presiding officer to do so rather than taking the full 90 day period.

The Commission also notes that the Model Milestones were adopted on April 20, 2005 (70 FR 20457), and have yet to be applied in full in any early site permit or combined license proceeding. Hence, the NRC has yet to develop any extensive experience on their application in such proceedings. Absent some fundamental problem or error with the Model Milestones—which the commenter has not described—the Commission is unwilling to modify the Model Milestones at this time. Once the Commission has had greater experience with the conduct of combined license application hearings, the Commission will revisit the Model Milestones to see if adjustments are desirable or if a specific schedule of milestones should be established for early site permit and combined license proceedings. Because the commenter's suggestion that the agency undertake rulemaking has been raised as part of the comment process on this Policy Statement, the agency is not treating the comment as a petition for rulemaking under 10 CFR 2.802. If the commenter continues to believe the agency should consider rulemaking on this matter, the agency would suggest the commenter file such a petition.

Other Comments

Comment: The provisions in the draft Policy Statement (in Section B.1) regarding the finality of COL proceedings should be revised to be consistent with a recent decision by the U.S. Court of Appeals in which the Seventh Circuit held that if all of an intervenor's contentions are resolved by the Licensing Board, then the Board's decision is final agency action with respect to that intervenor. (Morgan Lewis 5)

NRC Response: The Commission agrees that the draft Policy Statement could be misinterpreted on this score. Accordingly, the Commission has modified the pertinent provision of the

Policy Statement to state that ''a decision on common issues would become final agency action if it resolves a specific intervenor's contentions in a proceeding on an individual application.''

Comment: It is not an insubstantial change in the rules to now state the Commission, presiding officer on any request for hearing filed under § 52.103, will, by fiat, ''designate the procedures under which the proceeding shall be conducted.'' A bit of rulemaking might be in order well before commencement of extraordinary hearings before the Commission. (UCS 1A) NEI recommends that the NRC identify the hearing procedures to be used in the 10 CFR 52.103(a) ITAAC compliance hearings in the near term and certainly well before the first such hearing is imminent. (NEI 8)

NRC Response: Section 189a.(1)(B)(iv) of the Atomic Energy Act explicitly authorizes the Commission to establish procedures for ITAAC compliance hearings. This AEA provision has been reflected in Commission rules since 1992. ITAAC compliance hearing procedures warrant in-depth consideration, which would unduly delay the issuance of the Policy Statement. The Commission believes it appropriate to first issue guidance on proceedings on COL applications, which are indeed imminent, before turning to ITAAC compliance hearings. While the Commission is not addressing ITAAC compliance hearing procedures in this Policy Statement, the Commission intends to do so ''well before'' the first such hearing, as both intervenor and industry commenters request. The Commission, however, does not believe it necessary to establish such procedures by rule, and retains the discretion to specify such procedures in a future policy statement or on a case-by-case basis by order.

Comment: The draft policy statement instructs licensing boards to tailor hearing schedules to accommodate limited work authorizations, by holding hearings on environmental matters and portions of the Safety Evaluation Report that are ''relevant'' to environmental matters. Given that compliance with safety regulations is the principal means by which the NRC protects the environment, it is difficult to conceive of any safety-related issues whose resolution could lawfully be considered unrelated to compliance with the National Environmental Policy Act. Therefore, the Commission should eliminate this instruction from the policy statement. (Curran 5)

NRC Response: The Commission agrees that the portion of the draft Policy Statement to which the comment is addressed could be misunderstood, but disagrees with the comment's underlying premise. Specifically, the Commission need not resolve all safety issues in order to perform the environmental evaluation required in connection with a request for an LWA. Rather, the Commission need only resolve those safety issues identified in 10 CFR 50.10 as needing resolution before the Commission may issue an LWA. The Commission has revised the Policy Statement to eliminate the ambiguity identified in the comment.

Comment: The final Policy Statement should incorporate the following revision: ''In all proceedings, the licensing boards should formulate hearing schedules to accommodate any limited work authorization request, *unless the applicant specifically requests otherwise.*'' (NEI 2A) (additional suggested text in *italics*)

NRC Response: The presiding officer already has the authority to modify the schedule of a proceeding consistent with fairness to all parties and the expeditious disposition of the proceeding. See 10 CFR 2.319, 2.332, and 2.334. In this regard, the presiding officer must consider the interests of all parties, as well as the overall schedule, and not just the interests of the applicant. Accordingly, the Commission declines to add the suggested language to this portion of the Policy Statement.

Comment: The final Policy Statement should incorporate the following revision: ''Specifically, if an applicant requests [an LWA] as part of an application, the licensing board should generally schedule the hearings so as to first resolve those issues prerequisite to issuing [an LWA], *up to and including an early partial decision on the LWA.*'' (NEI 2B) (additional suggested text in *italics*)

NRC Response: ''Resolution'' of issues prerequisite to issuing an LWA necessarily includes a Licensing Board decision on those issues. To add the suggested language would be redundant and possibly confusing. Accordingly, the Commission declines to add the suggested language.

Comment: The draft Policy Statement should provide guidance for a proceeding in which a COL application references an early site permit (ESP) application or an application for ESP amendment, comparable to guidance set forth for COL applications which reference a design certification application. (Morgan Lewis 2, NEI 5)

NRC Response: The Commission agrees with this comment, and has modified the Policy Statement accordingly.

Comment: The Commission need not delay issuance of a combined license referencing a design certification application until the certification rule is final, absent a legal prohibition. A COL license condition premised on promulgation of the DC rule could be imposed, allowing any judicial challenge to be raised in a timely manner without adversely impacting the COL. (GE–Hitachi 2, NEI 7)

NRC Response: As the comment recognizes, the AEA requires the NRC to make certain findings before issuing a license. While a license condition may, in some instances, impose specific design or operational requirements to allow the NRC to make the required findings, a license condition may not be used to defer the required findings beyond the issuance of the license, *e.g.*, in order to complete a rulemaking. The Commission believes that the approach proposed in the comment may be inconsistent with the AEA in this respect, and so declines to adopt it.

Comment: The final Policy Statement should clarify the definition of completeness in the context of whether an application is acceptable for docketing, particularly given Commission approval of the Combined License Review Task Force recommendation to extend the duration and broaden the scope of the NRC licensing acceptance reviews. (NEI 1)

NRC Response: The NRC staff is developing detailed guidance on this subject. Such guidance is beyond the scope of this Policy Statement and will not be addressed in it.

Comment: The Commission should seek legislation to eliminate mandatory uncontested hearings. (NEI 9)

NRC Response: The question of whether legislation on a particular matter should be sought is beyond the scope of the Policy Statement. The Commission is not modifying the Policy Statement in response to this comment.

Comment: The Commission should commence COL licensing hearings based on the availability of draft licensing documents where circumstances warrant. (NEI 11)

NRC Response: We have recently addressed this question in our decision in *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI–07–17, 65 NRC 392 (2007). In that decision, we held that the Licensing Board, pursuant to 10 CFR 2.332(d), may not commence a hearing on environmental issues before the final environmental impact statement has been issued. *Id.* at 394. Hearings may be held on safety issues, however, prior to the staff's publication of its safety evaluation. The commenter has not

identified any reason for us to revisit that decision, which provides the basis for our position on the matter, and we decline to do so.

Comment: Commission policy should seek to ensure the NRC staff's timely completion of licensing reviews for new plant applications. (NEI 12)

NRC Response: The NRC has, for the last several years, been diligently preparing to review applications to build and operate new reactors. Part of that preparation has involved significant NRC staff effort in planning for timely reviews that assure that the agency discharges its duties under the Atomic Energy Act and NEPA. These efforts have been and continue to be reflected in the agency's Strategic Plans and budget requests, among other statements. The commenters can be assured that the NRC is committed to timely reviews provided it receives complete, high quality information from applicants.

In closing, the Commission notes that several commenters offered general statements of support or criticism of the Commission's licensing process or parts of that process. While the Commission acknowledges those comments, they do not raise any specific issue related to the Policy Statement, and no response to them is necessary.

STATEMENT OF POLICY ON CONDUCT OF NEW REACTOR LICENSING PROCEEDINGS CLI–08–07

I. Introduction

Because the Commission has received the first several applications for combined licenses (COLs) for nuclear power reactors and expects that several more applications for COLs will be filed within the next two years, the Commission has reexamined its procedures for conducting adjudicatory proceedings involving power reactor licensing. Such examination is particularly appropriate since the Commission will be considering these COL applications at the same time it expects to be reviewing various design certification and early site permit (ESP) applications, and the COL applications will likely reference design certification rules and ESPs, or design certification and ESP applications. Hearings related to the COL and ESP applications will be conducted within the framework of our Rules of Practice in 10 CFR part 2, as revised in 2004 and further updated in 2007 to reflect the revisions to 10 CFR part 52, and the existing policies applicable to adjudications. The Commission has, therefore, considered the differences between the licensing and construction of the first generation of nuclear plants, which involved developing technology, and the currently anticipated plants, which may be much more standardized than previous plants.

We believe that the 10 CFR part 2 procedures, as applied to the 10 CFR part 52 licensing process, will provide a fair and efficient framework for litigation of disputed issues arising under the Atomic Energy Act of 1954, as amended (Act) and the National Environmental Policy Act of 1969, as amended (NEPA), that are material to applications. Nonetheless, we also believe that additional improvements can be made to our process. In particular, the guidance stated in this policy statement is intended to implement our goal of avoiding duplicative litigation through consolidation to the extent possible.

The differences between the new generation of designs and the old, including the degree of standardization, as well as the differences between the 10 CFR part 50 and 10 CFR part 52 licensing processes, have led the Commission to review its procedures for treatment of a number of matters. Given the anticipated degree of plant standardization, the Commission has most closely considered the potential benefits of the staff's conducting its safety reviews using a ''design-centered'' approach, in which multiple applicants would apply for COLs for plants of identical design at different sites, and of consolidation of issues common to such applications before a single Atomic Safety and Licensing Board (licensing board or ASLB). The Commission has also considered its treatment of Limited Work Authorization requests; the timing of litigation of safety and environmental issues; and the order of procedure for hearings on inspections, tests, analyses, and acceptance criteria (ITAAC), which are completed before fuel loading. In considering these matters, the Commission sought to identify procedural measures within the existing Rules of Practice to ensure that particular issues are considered in the agency proceeding that is the most appropriate forum for resolving them, and to reduce unnecessary burdens for all participants.

The new Commission policy builds on the guidance in its current policies, issued in 1981 and 1998, on the conduct of adjudicatory proceedings, which the Commission endorses. *Statement of Policy on Conduct of Adjudicatory Proceedings,* CLI–98–12, 48 NRC 18 (July 28, 1998), 63 FR 41872 (August 5, 1998); *Statement of Policy on Conduct of Licensing Proceedings,* CLI–81–8, 13 NRC 452 (May 20, 1981), 46 FR 28533 (May 27, 1981). The 1981 and 1998 policy statements provided guidance to licensing boards on the use of tools, such as the establishment of and adherence to reasonable schedules, intended to reduce the time for completing licensing proceedings while ensuring that hearings were fair and produced adequate records. Since the Commission issued its previous statements, the Rules of Practice in 10 CFR Part 2 have been revised, and licensing proceedings are now usually conducted under the procedures of Subpart L, rather than Subpart G. *See* ''Changes to Adjudicatory Process,'' Final Rule, 69 FR 2182 (January 14, 2004). In addition, we have recently amended our licensing regulations in 10 CFR Parts 2, 50, 51 and 52 to clarify and improve the 10 CFR Part 52 licensing process. This statement of policy thus supplements the 1981 and 1998 statements.

With both the recent revisions to 10 CFR Part 2 and this guidance, the Commission's objectives remain unchanged. As always, the Commission aims to provide a fair hearing process, to avoid unnecessary delays in its review and hearing processes, and to enable the development of an informed adjudicatory record that supports agency decision making on matters related to the NRC's responsibilities for protecting public health and safety, the common defense and security, and the environment. In the context of new reactor licensing under 10 CFR part 52, members of the public should be afforded an opportunity for hearing on each genuine issue in dispute that is material to the particular agency action subject to adjudication. By the same token, however, applicants for a license should not have to litigate each such issue more than once.

The Commission emphasizes its expectation that the licensing boards will enforce adherence to the hearing procedures set forth in the Commission's Rules of Practice in 10 CFR Part 2, as interpreted by the Commission. In addition, the Commission has identified certain specific approaches for its licensing boards to consider implementing in individual proceedings, if appropriate, to minimize burdens on all parties involved. The measures suggested in this policy statement can be accomplished within the framework of the Commission's existing Rules of Practice. The Commission may consider further changes to the Rules of Practice as appropriate to enable additional improvements to the adjudicatory process.

II. Specific Guidance

Current adjudicatory procedures and policies provide the latitude to the Commission, its licensing boards and presiding officers to instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings. In the 1981 and 1998 policy statements, the Commission encouraged licensing boards to use a number of techniques for effective case management in contested proceedings. Licensing boards and presiding officers should continue to use these techniques, but should do so with regard for the new licensing processes in 10 CFR part 52 and the anticipated high degree of new plant standardization, which may afford significant efficiencies.

The Commission's approach to standardization through design certification has the potential for resolving design-specific issues in a rule, which subsequently cannot be challenged through application-specific litigation. *See* 10 CFR 52.63 (2007). Matters common to a particular design, however, may not have been resolved even for a certified design. For example, matters not treated as part of the design, such as operational programs, may remain unresolved for any particular application referencing a particular certified design. Further, site-specific design matters and satisfaction of ITAAC will not be resolved during design certification. The timing and manner in which associated design certification and COL applications are docketed may affect the resolution of these matters in proceedings on those applications, *e.g.*, with respect to what forum is appropriate for resolving an issue. As discussed further below, a design-centered review approach for treating such matters in adjudication may yield significant efficiencies in Commission proceedings.

As set forth below, the Commission has identified other approaches, as applied in the context of the current Rules of Practice in 10 CFR Part 2, as well as variations in procedure permitted under the current Rules of Practice that licensing boards should apply to proceedings. The Commission also intends to exercise its inherent supervisory authority, including its power to assume part or all of the functions of the presiding officer in a given adjudication, as appropriate in the context of a particular proceeding. *See*, *e.g., Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI–90–3, 31 NRC 219, 229 (1990). The Commission intends to promptly respond to adjudicatory matters placed before it, and such matters should ordinarily take priority over other actions before the Commissioners. We begin with the docketing of applications.

A. INITIAL MATTERS

1. Docketing of Applications

The rules in part 52 are designed to accommodate a COL applicant's particular circumstances, such that an applicant may reference a design certification rule, an ESP, both, or neither. *See* 10 CFR 52.79. The rules also allow a COL applicant to reference a design certification or ESP application that has been docketed but not yet granted. *See* 10 CFR 52.27(c) and *52.55(c).* Further, we have changed the procedures in § 2.101 to address ESP, design certification, and COL applications, in addition to construction permit and operating license applications. Accordingly, a COL applicant may submit the safety information required of an applicant by §§ 52.79 and 52.80(a) and (b) apart from the environmental information required by § 52.80(c), as is now permitted by § 2.101(a)(5). In addition, we have lengthened the time allowed between submission of parts of an application under § 2.101(a)(5) from six to eighteen months.

Notwithstanding these procedures, the Commission can envision a situation in which an applicant might want to present a particular ESP or COL application for docketing in a manner not currently authorized. For example, an applicant might wish to apply for a COL for a plant identical to those of other applicants under the design-centered approach, and request application of the provisions of 10 CFR part 52, Appendix N and Part 2, Subpart D, before it has prepared the site- or plant-specific portion of the application. Such an applicant might not be prepared to submit its application as required by the rules, even considering the flexibility afforded by § 2.101(a)(5).

Under such circumstances, the Commission would be favorably disposed to the NRC staff's entertaining a request for an exemption from the requirements of § 2.101. Such an exemption request could be granted if it is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Moreover, because this is a procedural rule established for the effective and efficient processing of applications, the Commission can exercise its inherent authority to approve such exemptions based on similar considerations of effectiveness and efficiency. The Commission strongly discourages piecemeal submission of portions of an application pursuant to an exemption unless such a procedure is likely to afford significant advantages to the design-centered review approach described in more detail below. The Commission intends to monitor requests for exemptions from the requirements of § 2.101, and to issue a case-specific order governing such matters if warranted. Whether a COL application is submitted pursuant to § 2.101 or an exemption, the first part of an application submitted should be complete before the staff accepts that part of the application for docketing. Similarly, the staff should not docket any subsequently submitted portion of the application unless it is complete.

2. Notice of Hearing

As required by § 2.104(a), a Notice of Hearing on an application is to be issued as soon as practicable after the application is docketed. A Notice of Hearing for a complete COL application should normally be issued within about thirty (30) days of the staff's docketing of the application. Section 2.101(a)(5), which provides for submitting applications in two parts, does not specify when the Notice of Hearing should be issued, nor is it clear when a Notice of Hearing would be issued for an application filed in parts under an exemption from § 2.101. With two exceptions, the Commission believes it most efficient to issue a Notice of Hearing only when the entire application has been docketed. The first exception is a construction permit application submitted in accordance with § 2.101(a–1), which results in a decision on early site review. The second exception involves circumstances in which: (1) A complete application is submitted; (2) one or more other applications that identify a design identical to that described in the complete application are submitted; and (3) another application is incomplete with respect to matters other than those common to the complete application. Under such circumstances, the Commission will give notice of the hearing on the complete application, and give notice of the hearing on the other application with respect to the matters common to the complete application. The Commission determination in this regard will consider the extent to which any notice is consistent with the timely completion of staff reviews using the design-centered approach and with the efficient conduct of any required hearing, with due regard for the rights of all parties. Upon submission of information

completing the other application, the Commission would give notice of a hearing with respect to that information. Under all other circumstances, the Commission will issue a Notice of Hearing only when a complete application has been docketed in order to avoid piecemeal litigation.

3. Limited Work Authorizations

Section 50.10 contains provisions for limited work authorizations, which allows certain construction activities on production and utilization facilities to commence before a construction permit or combined license is issued. The Commission has redefined the term ''construction'' in 10 CFR 50.10, as well as the provisions governing limited work authorizations. Accordingly, we are providing additional guidance regarding limited work authorizations.

In all proceedings, the licensing boards should formulate hearing schedules to accommodate any limited work authorization request. Specifically, if an applicant requests a limited work authorization as part of an application, the licensing board should generally schedule the hearings so as to first resolve those issues prerequisite to issuing a limited work authorization. This may lead to hearings on the safety and environmental matters specified in 10 CFR 50.10 before commencement of hearings on other issues. Such considerations should be incorporated into the milestones set for each proceeding in accordance with 10 CFR Part 2, Appendix B.

B. Treatment of Generic Issues

1. Consolidation of Issues Common to Multiple Applications

The Commission believes that generic consideration of issues common to several applications may well yield benefits, both in terms of effective consideration of issues and efficiency. Such benefits would accrue not only to the staff review process, but also to litigation of such matters before the licensing board. We acknowledge that consideration of generic matters common to several applications may be possible in several contexts. For example, an applicant might seek staff review of a corporate program such as quality assurance or security that is common to several of its applications. If contentions on such a program are admitted with respect to more than one application, consolidation of such contentions before a single licensing board may result in more efficient decision making, as well as conserving the parties' resources. Licensing boards should consider consolidating proceedings involving such matters, pursuant to an applicant's motion or pursuant to their own initiative under § 2.317(b). In addition, different applicants may seek COLs for plants of identical design at multiple sites, as in the design-centered review approach, and may therefore seek to implement the provisions of 10 CFR Part 2, Subpart D. In this regard, we have amended Subpart D to Part 2 and Appendix N to 10 CFR Part 52 to provide explicit treatment of COL applications for identical plants at multiple sites.

Because we believe that the design-centered approach is the chief example of circumstances in which generic consideration of issues common to several applications may yield benefits, we discuss that approach in detail below. While much has changed since we first promulgated Subpart D in 1975, we believe many of the concepts originally underpinning Subpart D still apply today, and we presume that Subpart D procedures, as well as other applicable Rules of Practice in 10 CFR Part 2, will be applied to applications employing a design-centered review approach. Our vision for the implementation of a ''design-centered'' approach under the procedures of Subpart D is set forth below.

As indicated above, issues, such as those involving operational programs or design acceptance criteria,[1] common to several applications referencing a design certification rule or design certification application may be most effectively and efficiently treated with a single review in a ''design-centered'' approach and, subsequently, in a single hearing. In order to achieve such benefits, however, applicants who intend to apply for licenses for plants of identical design and request the staff to employ the design-centered review approach should submit their applications simultaneously. Subpart D nonetheless affords the licensing board discretion to consolidate applications filed close in time, if this will be more efficient and otherwise provide for a fair hearing. While not required, we believe applicants for COLs for plants of identical design should consolidate the portions of their applications containing common information into a joint submission. In doing so, each applicant would also submit the information required by §§ 50.33(a) through (e) and 50.37 and would identify the location of its proposed facility, if this information has not already been submitted to the Commission.

Appendix N requires that the design of those structures, systems, and components important to radiological health and safety and the common defense and security described in separate applications be identical in order for the Commission to treat the applications under Appendix N and Subpart D. The Commission believes that any variances or exemptions requested from a design certification in this context should be common to all applications. In addition, while not required, the Commission encourages applicants to standardize the balance of their plants insofar as is practicable.

Subpart D provides flexibility in the hearing process. Each application will necessarily involve a separate proceeding to consider site-specific matters, and the required hearings may, as appropriate, be comprised of two (or more) phases, the sequence of which depends on the circumstances. For any of the phases, the hearings may be consolidated to consider common issues relating to all or some of the applications involved.

An applicant requesting treatment of its application under the design-centered approach may seek to submit separate portions of the application at different times, pursuant to § 2.101(a)(5) or an exemption from § 2.101, as discussed above. Under such circumstances, the Commission intends to issue a Notice of Hearing for the portion of the application to be reviewed under the design-centered approach, and a second notice limited to the portion of the application not treated under the design-centered review approach upon submission of the complete application. Such a procedure would not affect any prospective intervenor's substantive rights; i.e., members of the public will still have a right to petition for intervention on every issue material to the Commission's decision on each individual application.

The staff would review the common information in the applications, or in the joint submission, for sufficiency for docketing and, if acceptable, would docket this information as a portion of each application. Each application would be assigned a docket number in connection with the first portion of the application docketed, which could be the common submission. The applicants should designate one applicant to be the single point of contact for the staff review of this common information, and to represent the applicants before the licensing board.

[1] Design acceptance criteria are a special type of ITAAC that are used to verify the resolution of design issues for which completed design information was not provided in the design certification application.

Consistent with our guidance set forth above, we would expect to issue a Notice of Hearing only upon the docketing of at least one complete application that includes the common information. The Notice of Hearing will not only provide an opportunity to petition to intervene in the proceeding on the complete individual application, but will also provide such an opportunity with respect to the information common to all the applications, which would be docketed separately. Accordingly, upon issuance of such a notice, the Chief Judge of the Atomic Safety and Licensing Board Panel (ASLBP or Panel) should, as is the normal practice, designate a licensing board to preside over the application-specific proceeding, and should also designate a licensing board to preside over the consolidated portions of the applications. Initially, these two licensing boards could be the same.

A person having standing with respect to one of the facilities proposed in the applications partially consolidated would be entitled to petition for intervention in the proceeding on the common information. Such a petitioner would be required to satisfy the other applicable provisions of § 2.309 with respect to the application being contested to be admitted as a party to the proceeding on the common information. Petitioners admitted as parties to such a proceeding with respect to a proposed facility for which the application remains incomplete at the time of the initial Notice of Hearing would have an opportunity to propose contentions with respect to the rest of the application upon the docketing of a complete application, but would not need to demonstrate standing a second time. Those persons granted intervention are required to designate a lead for common contentions, as required by § 2.309(f)(3); as stated above, applicants submitting common information under the design-centered approach would likewise designate a representative to appear before the licensing board. In addition, the presiding officer may require consolidation of parties in accordance with § 2.316.

The Commission is willing to consider other methods of managing proceedings involving consideration of information common to several applications. For example, the Commission does not intend to foreclose the Chief Judge of the Panel from designating a licensing board to preside over common portions of applications on the motion of the applicants, even if separate proceedings have already been convened on one or more of the applications involved. In such a case, however, the applicants should jointly identify the common portions of their respective applications when requesting the Chief Judge to take such action. Petitioners admitted as parties to any affected proceeding would of course have the right to answer such a motion.

As stated above, upon issuance of a Notice of Hearing for a complete plant-specific application that includes information on ''common issues,'' the Chief Judge of the Panel should designate a licensing board to preside over the plant-specific portion of each application that is then complete. Each licensing board, whether designated to consider the common issues or a specific application, should manage its respective portion of the proceedings with due regard for our 1981 and 1998 policy statements. We emphasize that the Chief Judge of the Panel should not designate another licensing board to consider specific aspects of a proceeding unless the standards we enunciated in *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI–98–7, 47 NRC 307, 310–11 (1998) for doing so are met. These standards are that the proceeding involve discrete and separable issues; that multiple licensing boards can handle these issues more expeditiously than a single licensing board; and that the proceeding can be conducted without undue burden on the parties. *Id.*

An initial decision by the licensing board presiding over a proceeding on a joint submission containing information common to more than one plant-specific application will be a partial initial decision for which a party may request review under § 2.341 (as is also provided in Subpart D) and which we may review on our own motion. Such a decision would become part of each initial decision in the individual application proceedings, which will become final in accordance with the regulation that applies depending on which subpart of our Rules of Practice has been applied in a proceeding on a particular application (*e.g.*, § 2.713 under Subpart G; § 2.1210 under Subpart L). Accordingly, a decision on common issues would become final agency action if it resolves a specific intervenor's contentions in a proceeding on an individual application.

Revisions of specific applications during the review process could result in formerly common issues being referred to the licensing board presiding over a specific portion of one or more applications. These issues would be resolved in the normal course of adjudication, but may well result in delay in final determination of the individual application.

2. COL Applications Referencing Design Certification and ESP Applications

With respect to a design for which certification has been requested but not yet granted, the Commission intends to follow its longstanding precedent that ''licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.'' *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI–99–11, 49 NRC 328, 345 (1999), *quoting Potomac Elec. Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB–218, 8 AEC 79, 85 (1974). In accordance with these decisions, a licensing board should treat the NRC's docketing of a design certification application as the Commission's determination that the design is the subject of a general rulemaking. We believe that a contention that raises an issue on a design matter addressed in the design certification application should be resolved in the design certification rulemaking proceeding, and not the COL proceeding. Accordingly, in a COL proceeding in which the application references a docketed design certification application, the licensing board should refer such a contention to the staff for consideration in the design certification rulemaking, and hold that contention in abeyance, if it is otherwise admissible. Upon adoption of a final design certification rule, such a contention should be denied.

Similar considerations apply if a COL applicant references an ESP application that has not been granted. In such a case, the Licensing Board presiding over the proceeding on the COL application should refer contentions within the scope of the ESP proceeding to the Licensing Board presiding over the ESP proceeding.

An individual applicant, nonetheless, may choose to request that the application be treated as a ''custom'' design, and thereby resolve any specific technical matter in the context of its individual application. An applicant might choose such a course if, for example, the referenced design certification application were denied, or the rulemaking delayed. The application-specific licensing board would then consider contentions on design issues, which otherwise would have been treated in the design certification proceeding. Similarly, a COL applicant referencing a design

certification application may request an exemption from one or more elements of the requested design certification, as provided in § 52.63(b) and Section VIII of each appendix to 10 CFR Part 52 that certifies a design. As set forth in those provisions, such a request is subject to litigation in the same manner as other issues in a COL proceeding. Since the underlying element of the design may change after the exemption request is submitted, such an exemption may ultimately become unnecessary or may need to be reconsidered or conformed to the final design certification rule. Such matters would be considered by an application-specific licensing board. A licensing board considering a COL application referencing a design certification application might conclude the proceeding and determine that the COL application is otherwise acceptable before the design certification rule becomes final. In such circumstances, the license may not issue until the design certification rule is final, unless the applicant requests that the entire application be treated as a ''custom'' design.

COL applicants should coordinate with vendors applying for certified designs to ensure that decisions on design certification applications do not impede decisions on COL applications. If design certification is delayed, a licensing board considering common technical issues may likewise be delayed.

3. Subsequent Applications Referencing a Design Certification Rule

If the Commission grants initial COL applications referencing a particular design certification rule, the Commission believes it likely that subsequent COL applicants will also reference that design certification rule. In this event, the Commission would expect to develop additional processes to facilitate coordination of proceedings on such applications. We observe, however, that an issue associated with such matters as operational programs or design acceptance criteria may be resolved through the design-centered review approach for initial applications containing common information, but we do not intend to impose any resolution so obtained on subsequent COL applicants. While there is no requirement to adopt a previously-approved resolution of an issue, and subsequent applicants are free to use the most recent state-of-the-art methods to resolve such issues, we nevertheless urge such applicants to consider adopting previous resolutions in order to maximize plant standardization. If a COL applicant adopts an approach to a technical issue previously found acceptable, no further staff review of the adequacy of the approach is necessary. Rather, the staff review should be limited to verification that the applicant has indeed adopted the previously approved approach and will properly implement it, and, for technical issues that depend on site-specific factors, that the previously-approved approach applies to the applicant's proposed facility.

C. ITAAC

In first promulgating 10 CFR Part 52 in 1989, we determined that hearings on whether the acceptance criteria in a COL have been met (ITAAC-compliance hearings) would be held in accordance with the Administrative Procedure Act (APA) provisions applicable to determining applications for initial licenses, but that we would specify the procedures to be followed in the Notice of Hearing. *See* 10 CFR 52.103(b)(2)(i) (1990); 54 FR 15395 (April 18, 1989). In enacting the Energy Policy Act of 1992, Congress subsequently confirmed our authority to adopt 10 CFR Part 52, and by statute accorded us additional discretion to determine procedures, whether formal or informal, for ITAAC-compliance hearings. *See* Atomic Energy Act section 189a.(1)(B)(iv), 42 U.S.C. 2239(a)(1)(B)(iv). We therefore amended § 52.103(d) to provide that we would determine, in our discretion, ''appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under [§ 52.103(a)].''

While we recognize that specification of procedures for the treatment of requests for hearings on ITAAC would lend some predictability to the ITAAC compliance process, we are not yet in a position to specify such procedures, since we have not approved even one complete set of ITAAC necessary for issuing a COL. Further, ITAAC-compliance hearings are likely several years distant, and we have no experience with the type and number of hearing requests that we might receive with respect to ITAAC compliance. While it may not be necessary to consider the first requests for ITAAC-compliance hearings in order for us to determine the procedures appropriate to govern such hearings, we believe it premature to specify such procedures now. In addition, the staff is now formulating guidance on the times necessary for the staff to consider different categories of completed ITAAC, and this guidance should assist licensees in scheduling and performing ITAAC so as to minimize the critical path for staff consideration of completed ITAAC.

In view of the above considerations, we have identified one measure to lend predictability to the ITAAC compliance process: The Commission itself will serve as the presiding officer with respect to any request for a hearing filed under § 52.103. In acting as the presiding officer under these circumstances, we will make three initial determinations. First, we will decide whether the person requesting the hearing has shown, *prima facie*, that one or more of the acceptance criteria in the COL have not been, or will not be met, and the attendant public health and safety consequences of such non-conformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety. Second, if we decide to grant a request for a hearing on ITAAC compliance, we will decide, pursuant to § 52.103(c), whether there will be reasonable assurance of adequate protection of the public health and safety during a period of interim operation. Third, we will designate the procedures under which the proceeding shall be conducted. We have amended § 52.103 and our Rules of Practice (10 CFR 2.309, 2.310, and 2.341) to incorporate these changes.

III. Conclusion

The Commission reiterates its long-standing commitment to ensuring that hearings are fair and produce an adequate record for decision, while at the same time being completed as expeditiously as possible. The Commission intends to monitor its proceedings to ensure that they are being concluded in a fair and timely fashion. To this end, the Commission will act in individual proceedings, as appropriate, to provide guidance to licensing boards and parties, and to decide issues in the interest of a prompt and effective resolution of the matters set for adjudication.

Dated at Rockville, Maryland, this 11th day of April 2008.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–8272 Filed 4–16–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, Copies available from: U.S. Securities and Exchange

Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–2; SEC File No. 270–381; OMB Control No. 3235–0434.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The ''Penny Stock Disclosure Rules'' (Rule 15g–2, 17 CFR 240.15g–2) require broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a ''penny stock.'' As amended, the rule requires broker-dealers to obtain written acknowledgement from the customer that he or she has received the required risk disclosure document. The amended rule also requires broker-dealers to maintain a copy of the customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place.

The risk disclosure documents are for the benefit of the customers, to assure that they are aware of the risks of trading in ''penny stocks'' before they enter into a transaction. The risk disclosure documents are maintained by the broker-dealers and may be reviewed during the course of an examination by the Commission.

The Commission estimates that there are approximately 240 broker-dealers that could potentially be subject to current Rule 15g–2, and that each one of these firms processes an average of three new customers for penny stocks per week. Thus, each respondent processes approximately 156 penny stock disclosure documents per year. If communications in tangible form alone are used to satisfy the requirements of Rule 15g–2, then (a) the copying and mailing of the penny stock disclosure document takes no more than two minutes per customer, and (b) each customer takes no more than eight minutes to review, sign and return the penny stock disclosure document. Thus, the total existing respondent burden is approximately 10 minutes per response, or an aggregate total of 1,560 minutes per respondent. Since there are 240 respondents, the current annual burden is 374,400 minutes (1,560 minutes per each of the 240 respondents) or 6,240 hours. In addition, broker-dealers incur a recordkeeping burden of approximately two minutes per response. Since there are approximately 156 responses for each respondent, the respondents incur an aggregate recordkeeping burden of 74,880 minutes (240 respondents × 156 responses for each × 2 minutes per response) or 1,248 hours, under Rule 15g–2. Accordingly, the current aggregate annual hour burden associated with Rule 15g–2 (that is, assuming that all respondents provide tangible copies of the required documents) is approximately 7,488 hours (6,240 response hours + 1,248 recordkeeping hours).

The burden hours associated with Rule 15g–2 may be slightly reduced when the penny stock disclosure document required under the rule is provided through electronic means such as e-mail from the broker-dealer (*e.g.*, the broker-dealer respondent may take only one minute, instead of the two minutes estimated above, to provide the penny stock disclosure document by e-mail to its customer) and return e-mail from the customer (the customer may take only seven minutes, to review, electronically sign and electronically return the penny stock disclosure document). In this regard, if each of the customer respondents estimated above communicates with his or her broker-dealer electronically, the total ongoing respondent burden is approximately 8 minutes per response, or an aggregate total of 1,248 minutes (156 customers × 8 minutes per respondent). Assuming 240 respondents, the annual burden, if electronic communications were used by all customers, is 299,520 minutes (1,248 minutes per each of the 240 respondents) or 4,992 hours. Under Rule 15g–2, the recordkeeping burden is 1,248 hours. Thus, if all broker-dealer respondents obtain and send the documents required under the rules electronically, the aggregate annual hour burden associated with Rule 15g–2 is 6,240 (1,248 hours + 4,992 hours).

In addition, if the penny stock customer requests a paper copy of the information on the Commission's Web site regarding microcap securities, including penny stocks, from his or her broker-dealer, the printing and mailing of the document containing this information takes no more than two minutes per customer. Because many investors have access to the Commission's Web site via computers located in their homes, or in easily accessible public places such as libraries, then, at most, a quarter of customers who are required to receive the Rule 15g–2 disclosure document request that their broker-dealer provide them with the additional microcap and penny stock information posted on the Commission's Web site. Thus, each broker-dealer respondent processes approximately 39 requests for paper copies of this information per year or an aggregate total of 78 minutes per respondent (2 minutes per customer × 39 requests per respondent). Since there are 240 respondents, the estimated annual burden is 18,720 minutes (78 minutes per each of the 240 respondents) or 312 hours.

We have no way of knowing how many broker-dealers and customers will chose to communicate electronically. Assuming that 50 percent of respondents continue to provide documents and obtain signatures in tangible form and 50 percent choose to communicate electronically to satisfy the requirements of Rule 15g–2, the total aggregate burden hours is 7,176 ((aggregate burden hours for documents and signatures in tangible form × 0.50 of the respondents = 3,744 hours) + (aggregate burden hours for electronically signed and transmitted documents × 0.50 of the respondents = 3,120 hours) + (312 burden hours for those customers making requests for a copy of the information on the Commission's Web site)).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or comments may be sent by e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: April 10, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8182 Filed 4–16–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, Copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–9; SEC File No. 270–325 ; OMB Control No. 3235–0385.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.), the Securities and Exchange Commission (''Commission'') is soliciting comment on the collection of information described below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 15(c)(2) of the Securities Exchange Act of 1934 (15 U.S. C. 78a et seq.) (the ''Exchange Act'') authorizes the Commission to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative practices in connection with over-the-counter (''OTC'') securities transactions. Pursuant to this authority, the Commission in 1989 adopted Rule 15a–6 (the ''Rule''), which was subsequently redesignated as Rule 15g–9, 17 CFR 240.15g–9. The Rule requires broker-dealers to produce a written suitability determination for, and to obtain a written customer agreement to, certain recommended transactions in low-priced stocks that are not registered on a national securities exchange or authorized for trading on NASDAQ, and whose issuers do not meet certain minimum financial standards. The Rule is intended to prevent the indiscriminate use by broker-dealers of fraudulent, high pressure telephone sales campaigns to sell low-priced securities to unsophisticated customers.

The Commission staff estimates that there are approximately 240 broker-dealers subject to the Rule. The burden of the Rule on a respondent varies widely depending on the frequency with which new customers are solicited. On the average for all respondents, the staff has estimated that respondents process three new customers per week, or approximately 156 new customer suitability determinations per year. We also estimate that a broker-dealer would expend approximately one-half hour per new customer in obtaining, reviewing, and processing (including transmitting to the customer) the information required by Rule 15g–9, and each respondent would consequently spend 78 hours annually (156 customers × .5 hours) obtaining the information required in the rule. We determined, based on the estimate of 240 broker-dealer respondents, that the current annual burden of Rule 15g–9 is 18,720 hours (240 respondents × 78 hours).

In addition, we estimate that if tangible communications alone are used to transmit the documents required by Rule 15g–9, each customer should take: (1) No more than eight minutes to review, sign and return the suitability determination document; and (2) no more than two minutes to either read and return or produce the customer agreement for a particular recommended transaction in penny stocks, listing the issuer and number of shares of the particular penny stock to be purchased, and send it to the broker-dealer. Thus, the total current customer respondent burden is approximately 10 minutes per response, for an aggregate total of 1,560 minutes for each broker-dealer respondent. Since there are 240 respondents, the annual burden for customer responses is 374,400 minutes (1,560 customer minutes per each of the 240 respondents) or 6,240 hours.

In addition, we estimate that, if tangible means of communications alone are used, broker-dealers could incur a recordkeeping burden under Rule 15g–9 of approximately two minutes per response. Since there are approximately 240 broker-dealer respondents and each respondent would have approximately 156 responses annually, respondents would incur an aggregate recordkeeping burden of 74,880 minutes (240 respondents × 156 responses × 2 minutes per response), or 1,248 hours. Accordingly, the aggregate annual hour burden associated with Rule 15g–9 is 26,208 hours (18,720 hours to prepare the suitability statement and agreement + 6,240 hours for customer review + 1,248 recordkeeping hours).

We recognize that under the amendments to Rule 15g–9, the burden hours may be slightly reduced if the transaction agreement required under the rule is provided through electronic means such as e-mail from the customer to the broker-dealer (*e.g.*, the customer may take only one minute, instead of the two minutes estimated above, to provide the transaction agreement by e-mail rather than regular mail). If each of the customer respondents estimated above communicates with his or her broker-dealer electronically, the total burden hours on the customers would be reduced from 10 minutes to 9 minutes per response, or an aggregate total of 1,404 minutes per respondent (156 customers × 9 minutes for each customer). Since there are 240 respondents, the annual customer respondent burden, if electronic communications were used by all customers, would be approximately 336,960 minutes (240 respondents × 1,404 minutes per each respondent), or 5,616 hours. We do not believe the hour burden on broker-dealers in obtaining, reviewing, and processing the suitability determination would change through use of electronic communications. In addition, we do not believe that, based on information currently available to us, recordkeeping burdens under Rule 15g–9 would change where the required documents were sent or received through means of electronic communication. Thus, if all broker-dealer respondents obtain and send the documents required under the rule electronically, the aggregate annual hour burden associated with Rule 15g–9 would be 25,584 hours (18,720 hours to prepare the suitability statement and agreement + 5,616 hours for customer review + 1,248 recordkeeping hours).

We cannot estimate how many broker-dealers and customers will choose to communicate electronically. If we assume that 50 percent of respondents would continue to provide documents and obtain signatures in tangible form, and 50 percent would choose to communicate electronically in satisfaction of the requirements of Rule 15g–9, the total aggregate hour burden would be 25,896 burden hours ((26,208 aggregate burden hours for documents and signatures in tangible form × 0.50 of the respondents = 13,104 hours) + (25,584 aggregate burden hours for electronically signed and transmitted documents × 0.50 of the respondents = 12,792 hours)).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or comments may be sent by e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: April 10, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8183 Filed 4–16–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–57649; File No. 4–551]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., The NASDAQ Stock Market LLC, NYSE Arca, Inc., and Philadelphia Stock Exchange, Inc.

April 11, 2008.

Notice is hereby given that the Securities and Exchange Commission (''Commission'') has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] approving and declaring effective an amendment to the plan for allocating regulatory responsibility (''Plan'') filed pursuant to Rule 17d–2 of the Act,[2] by the American Stock Exchange LLC (''Amex''), Boston Stock Exchange, Inc. (''BSE''), Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, LLC (''ISE''), Financial Industry Regulatory Authority, Inc. (''FINRA''), The NASDAQ Stock Market LLC (''NASDAQ''), NYSE Arca, Inc. (''NYSE Arca''), and Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively, ''SRO participants'') concerning options-related market surveillance.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On December 11, 2007, the Commission approved the Plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[11] The Plan is designed to reduce regulatory duplication for common members by allocating regulatory responsibility for certain options-related market surveillance matters among the SRO participants.[12] Generally, under the current Plan, an SRO participant will

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release No. 56941 (December 11, 2007), 72 FR 71723 (December 18, 2007) (File No. 4–551).

[12] The Plan is wholly separate from the multiparty options agreement made pursuant to Rule 17d–2 by and among Amex, BSE, CBOE, ISE, FINRA, New York Stock Exchange LLC, NASDAQ, NYSE Arca, and Phlx involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct of broker-dealers of accounts for listed options or index warrants entered into on December 1, 2006, and as may be amended from time to time. *See* Securities Exchange Act Release Nos. 55145 (January 22, 2007), 72 FR 3882 (January 26, 2007) (File No. S7–966), and 55532 (March 26, 2007), 72 FR 15729 (April 2, 2007) (File No. S7–966). *See also* Securities Exchange Act Release No. 57481 (March 12, 2008), 73 FR 14507 (March 18, 2008) (File No. S7–966) (approving an amendment which sought, among other things, to add NASDAQ as a participant to such agreement).

serve as the Designated Options Surveillance Regulator (''DOSR'') for each common member assigned to it and will assume regulatory responsibility with respect to that common member's compliance with applicable common rules for certain accounts. The Plan currently is limited to the review of expiring exercise declarations pursuant to the common rules listed in Exhibit A to the Plan. When an SRO has been named as a common member's DOSR, all other SROs to which the common member belongs will be relieved of regulatory responsibility for that common member, pursuant to the terms of the Plan, with respect to the applicable common rules specified in Exhibit A to the Plan.

III. Proposed Amendment to the Plan

On April 4, 2008, the SRO participants submitted a proposed amendment to the Plan. The purpose of the amendment is to add NASDAQ as an SRO participant.[13] The amended agreement replaces the previous agreement in its entirety. The text of the proposed amended 17d-2 Plan is as follows (additions are *italicized*):

* * * * *

AGREEMENT BY AND AMONG THE AMERICAN STOCK EXCHANGE LLC, THE BOSTON STOCK EXCHANGE, INC., THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED, THE INTERNATIONAL SECURITIES EXCHANGE LLC, FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., NYSE ARCA, INC., *THE NASDAQ STOCK MARKET LLC,* AND THE PHILADELPHIA STOCK EXCHANGE, INC., PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This agreement (this ''Agreement''), by and among the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange LLC (''ISE''), Financial Industry Regulatory Authority, Inc. (''FINRA''), NYSE Arca, Inc. (''Arca''), *The NASDAQ Stock Market LLC (''Nasdaq''),* and the Philadelphia Stock Exchange, Inc. (''PHLX''), is made this 10th day of October, 2007, *and as amended this 31st day of March, 2008,* pursuant to Section 17(d) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and Rule 17d–2 thereunder (''Rule 17d-2''), which allows for a joint plan among self-regulatory organizations (''SROs'') to allocate regulatory obligations with respect to brokers or dealers that are members of two or more of the parties to this Agreement (''Common Members''). The Amex, BSE, CBOE, ISE, FINRA, Arca, *Nasdaq,* and PHLX are collectively referred to herein as the ''Participants'' and individually, each a ''Participant.'' This Agreement shall be administered by a committee known as the Options Surveillance Group (the ''OSG'' or ''Group''), as described in Section V hereof. Unless defined in this Agreement or the context otherwise requires, the terms used herein shall have the meanings assigned thereto by the Exchange Act and the rules and regulations thereunder.

WHEREAS, the Participants desire to eliminate regulatory duplication with respect to SRO market surveillance of Common Member [†1] activities with regard to certain common rules relating to listed options (''Options''); and

WHEREAS, for this purpose, the Participants desire to execute and file this Agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') pursuant to Rule 17d–2.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Participants agree as follows:

I. Except as otherwise provided in this Agreement, each Participant shall assume Regulatory Responsibility (as defined below) for the Common Members that are allocated or assigned to such Participant in accordance with the terms of this Agreement and shall be relieved of its Regulatory Responsibility as to the remaining Common Members. For purposes of this Agreement, a Participant shall be considered to be the Designated Options Surveillance Regulator (''DOSR'') for each Common Member that is allocated to it in accordance with Section VII.

II. As used in this Agreement, the term ''Regulatory Responsibility'' shall mean surveillance, investigation and enforcement responsibilities relating to compliance by the Common Members with such Options rules of the Participants as the Participants shall determine are substantially similar and shall approve from time to time, insofar as such rules relate to market surveillance (collectively, the ''Common Rules''). For the purposes of this Agreement the list of Common Rules is attached as Exhibit A hereto, which may only be amended upon unanimous written agreement by the Participants. The DOSR assigned to each Common Member shall assume Regulatory Responsibility with regard to that Common Member's compliance with the applicable Common Rules for certain accounts.[†2] A DOSR may perform its Regulatory Responsibility or enter an agreement to transfer or assign such responsibilities to a national securities exchange registered with the SEC under Section 6(a) of the Exchange Act or a national securities association registered with the SEC under Section 15A of the Exchange Act. A DOSR may not transfer or assign its Regulatory Responsibility to an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products.

The term ''Regulatory Responsibility'' does not include, and each Participant shall retain full responsibility with respect to:

(a) Surveillance, investigative and enforcement responsibilities other than those included in the definition of Regulatory Responsibility;

[13] The Commission notes that it has recently approved, pursuant to Section 19(b)(2) of the Act, a proposal filed by NASDAQ relating to the adoption of rules governing participation in and trading on The NASDAQ Options Market (''NOM''), which is an options exchange facility of NASDAQ operated by The Nasdaq Options Market LLC. *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080). Section XVII of the Plan states that any national securities exchange registered with the Commission under Section 6(a) of the Act or any national securities association registered with the Commission under Section 15A of the Act may become an SRO participant to the agreement provided that: (1) Such applicant has adopted rules substantially similar to the common rules and received approval thereof from the Commission; (2) such applicant has provided each SRO participant a signed statement pursuant to which the applicant agrees to be bound by the terms of the agreement to the same effect as though it had originally signed the agreement; and (3) an amended agreement reflecting the addition of such applicant as an SRO participant has been filed with and approved by the Commission. The Commission notes that the SRO participants have represented that NASDAQ has satisfied its applicable obligations under Section XVII of the Plan. *See* letter from John Zecca, Vice President and Associate General Counsel, NASDAQ, to James Alaimo, Chair, Options Surveillance Group, Amex, dated March 24, 2008 (describing NASDAQ's statements as to its compliance with respect to the obligations under Section XVII of the Plan).

[†1] In the case of the BSE, members are those persons who are Options Participants (as defined in the Boston Options Exchange LLC Rules).

[†2] Certain accounts shall include customer (''C'' as classified by the Options Clearing Corporation (''OCC'')) and firm (''F'' as classified by OCC) accounts, as well as other accounts, such as market maker accounts as the Participants shall, from time to time, identify as appropriate to review.

(b) Any aspects of the rules of a Participant that are not substantially similar to the Common Rules or that are allocated for a separate surveillance purpose under any other agreement made pursuant to Rule 17d–2. Any such aspects of a Common Rule will be noted as excluded on Exhibit A.

III. Each year within 30 days of the anniversary date of the commencement of operation of this Agreement, or more frequently if required by changes in the rules of a Participant, each Participant shall submit to the other Participants, through the Chair of the OSG, an updated list of Common Rules for review. This updated list may add Common Rules to Exhibit A, shall delete from Exhibit A rules of that Participant that are no longer identical or substantially similar to the Common Rules, and shall confirm that the remaining rules of the Participant included on Exhibit A continue to be identically or substantially similar to the Common Rules. Within 30 days from the date that each Participant has received revisions to Exhibit A from the Chair of the OSG, each Participant shall confirm in writing to the Chair of the OSG whether that Participant's rules listed in Exhibit A are Common Rules.

IV. Apparent violation of another Participant's rules discovered by a DOSR, but which rules are not within the scope of the discovering DOSR's Regulatory Responsibility, shall be referred to the relevant Participant for such action as is deemed appropriate by that Participant.

Notwithstanding the foregoing, nothing contained herein shall preclude a DOSR in its discretion from requesting that another Participant conduct an investigative or enforcement proceeding (''Proceeding'') on a matter for which the requesting DOSR has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant and confirmed in writing by the Participants involved. Additionally, nothing in this Agreement shall prevent another Participant on whose market potential violative activity took place from conducting its own Proceeding on a matter. The Participant conducting the Proceeding shall advise the assigned DOSR. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in a Proceeding.

V. The OSG shall be composed of one representative designated by each of the Participants (a ''Representative''). Each Participant shall also designate one or more persons as its alternate representative(s) (an ''Alternate Representative''). In the absence of the Representative, the Alternate Representative shall assume the powers, duties and responsibilities of the Representative. Each Participant may at any time replace its Representative and/or its Alternate Representative to the Group.[†3] A majority of the OSG shall constitute a quorum and, unless otherwise required, the affirmative vote of a majority of the Representatives present (in person, by telephone or by written consent) shall be necessary to constitute action by the Group.

The Group will have a Chair, Vice Chair and Secretary. A different Participant will assume each position on a rotating basis for a one-year term. In the event that a Participant replaces a Representative who is acting as Chair, Vice Chair or Secretary, the newly appointed Representative shall assume the position of Chair, Vice Chair, or Secretary (as applicable) vacated by the Participant's former Representative. In the event a Participant cannot fulfill its duties as Chair, the Participant serving as Vice Chair shall substitute for the Chair and complete the subject unfulfilled term. All notices and other communications for the OSG are to be sent in care of the Chair and, as appropriate, to each Representative.

VI. The OSG shall determine the times and locations of Group meetings, provided that the Chair, acting alone, may also call a meeting of the Group in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior to the meeting date. Representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VII. No less frequently than every two years, in such manner as the Group deems appropriate, the OSG shall allocate Common Members that conduct an Options business among the Participants (''Allocation''), and the Participant to which a Common Member is allocated will serve as the DOSR for that Common Member. Any Allocation shall be based on the following principles, except to the extent all affected Participants consent to one or more different principles:

(a) The OSG may not allocate a Common Member to a Participant unless the Common Member is a member of that Participant.

(b) To the extent practicable, Common Members that conduct an Options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants, provided that no Common Members shall be allocated to FINRA. For example, if sixteen Common Members that conduct an Options business are members only of three Participants, none of which is FINRA, those Common Members shall be allocated among the three Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members. If, in the previous example, one of the three Participants is FINRA, the sixteen Common Members would be allocated evenly between the remaining Participants, so that the two non-FINRA Participants would be allocated eight Common Members each.

(c) To the extent practicable, Allocation shall take into account the amount of Options activity conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participants of which they are members. Allocation will also take into account similar allocations pursuant to other plans or agreements to which the Common Members are party to maintain consistency in oversight of the Common Members.[†4]

(d) To the extent practicable, Allocation of Common Members to Participants will be rotated among the applicable Participants such that a Common Member shall not be allocated to a Participant to which that Common Member was allocated within the previous two years. The assignment of DOSRs pursuant to the Allocation is attached as Exhibit B hereto, and will be updated from time to time to reflect Common Member Allocation changes.

(e) The Group may reallocate Common Members from time-to-time, as it deems appropriate.

(f) Whenever a Common Member ceases to be a member of its DOSR, the DOSR shall promptly inform the Group, which shall review the matter and allocate the Common Member to another Participant.

(g) A DOSR may request that a Common Member to which it is assigned be reallocated to another Participant by giving 30 days written notice to the Chair of the OSG. The Group, in its discretion, may approve such request and reallocate the Common Member to another Participant.

[†3] A Participant must give notice to the Chair of the Group of such a change.

[†4] For example, if one Participant was allocated a Common Member by another regulatory group that Participant would be assigned to be the DOSR of that Common Member, unless there is good cause not to make that assignment.

(h) All determinations by the Group with respect to Allocation shall be made by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any Allocation relating to a Common Member unless the Common Member is a member of such Participant.

VIII. Each DOSR shall conduct routine surveillance reviews to detect violations of the applicable Common Rules by each Common Member allocated to it with a frequency (daily, weekly, monthly, quarterly, semi-annually or annually as noted on Exhibit A) not less than that determined by the Group. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOSR.

At each meeting of the OSG, each Participant shall be prepared to report on the status of its surveillance program for the previous quarter and any period prior thereto that has not previously been reported to the Group. In the event a DOSR believes it will not be able to complete its Regulatory Responsibility for its allocated Common Members, it will so advise the Group in writing promptly. The Group will undertake to remedy this situation by reallocating the subject Common Members among the remaining Participants. In such instance, the Group may determine to impose a regulatory fee for services provided to the DOSR that was unable to fulfill its Regulatory Responsibility.

IX. Each Participant will, upon request, promptly furnish a copy of the report or applicable portions thereof relating to any investigation made pursuant to the provisions of this Agreement to each other Participant of which the Common Member under investigation is a member.

X. Each Participant will routinely populate a common database, to be accessed by the Group relating to any formal regulatory action taken during the course of a Proceeding with respect to the Common Rules concerning a Common Member.

XI. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to any Participant to the attention of that Participant's Representative, to the Participant's principal place of business or by e-mail at such address as the Representative shall have filed in writing with the Chair.

XII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any of the Participants may agree that one or more will compensate the other(s) for costs incurred.

XIII. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Group. Each Participant will notify the Common Members that have been allocated to it that such Participant will serve as DOSR for that Common Member.

XIV. This Agreement shall be effective upon approval of the Commission. This Agreement may only be amended in writing duly approved by each Participant. All amendments to this Agreement, excluding changes to Exhibits A and B, must be filed with and approved by the Commission.

XV. Any Participant may manifest its intention to cancel its participation in this Agreement at any time upon providing written notice to (i) the Group six months prior to the date of such cancellation, or such other period as all the Participants may agree, and (ii) the Commission. Upon receipt of the notice the Group shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the canceling Participant was the DOSR. The canceling Participant shall retain its Regulatory Responsibility and other rights, privileges and duties pursuant to this Agreement until the Group has completed the reallocation as described above, and the Commission has approved the cancellation.

XVI. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, or such other period as all the Participants may agree. Such termination will become effective upon Commission approval.

XVII. Participation in the Group shall be strictly limited to the Participants and no other party shall have any right to attend or otherwise participate in the Group except with the unanimous approval of all Participants. Notwithstanding the foregoing, any national securities exchange registered with the SEC under Section 6(a) of the Act or any national securities association registered with the SEC under section 15A of the Act may become a Participant to this Agreement provided that: (i) such applicant has adopted rules substantially similar to the Common Rules, and received approval thereof from the SEC; (ii) such applicant has provided each Participant with a signed statement whereby the applicant agrees to be bound by the terms of this Agreement to the same effect as though it had originally signed this Agreement and (iii) an amended agreement reflecting the addition of such applicant as a Participant has been filed with and approved by the Commission.

XVIII. This Agreement is wholly separate from the multiparty Agreement made pursuant to Rule 17d–2 by and among the Amex, BSE, CBOE, ISE, NASD, the New York Stock Exchange, LLC, Arca and PHLX involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered into on December 1, 2006, and as may be amended from time to time.

LIMITATION OF LIABILITY

No Participant nor the Group nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Regulatory Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other Participants or its respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by the Participants, individually or as a group, or by the OSG with respect to any Regulatory Responsibility to be performed hereunder.

RELIEF FROM RESPONSIBILITY

Pursuant to Section 17(d)(1)(A) of the Exchange Act and Rule 17d–2, the Participants join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve the Participants that are party to this Agreement and are not the DOSR as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOSR.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original,

but all such counterparts shall together constitute one and the same Agreement.

In Witness Whereof, the Participants hereto have executed this Agreement as of the date and year first above written.

* * * * *

OPTIONS SURVEILLANCE GROUP
17d–2

Exhibit A

Common Rules

VIOLATION I: EXPIRING EXERCISE DECLARATIONS (EED)—FOR LISTED EQUITY OPTIONS EXPIRING: THE THIRD SATURDAY FOLLOWING THE THIRD FRIDAY OF A MONTH, QUARTERLY, AND FOR LISTED FLEX OPTIONS

SRO	Description of rule	Exchange rule number	Frequency of review
Amex	Exercise of Options Contracts	Amex Rule 980	At Expiration.
BOX	Exercise of Options Contracts	BOX Rule 7.1	At Expiration.
CBOE	Exercise of Options Contracts	CBOE Rule 11.1	At Expiration.
FINRA	Exercise of Options Contracts	NASD Rule 2860	At Expiration.
ISE	Exercise of Options Contracts	ISE Rule 1100	At Expiration.
Nasdaq	*Exercise of Options Contracts*	*Nasdaq Chapter VIII, Sec. 1*	*At Expiration.*
NYSEArca	Exercise of Options Contracts	NYSEArca Rule 6.24	At Expiration.
PHLX	Exercise of Equity Options Contracts	PHLX Rule 1042	At Expiration.

* * * * *

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–551 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–551. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of Amex, BSE, CBOE, ISE, FINRA, NASDAQ, NYSE Arca, and Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–551 and should be submitted on or before May 8, 2008.

V. Discussion

The Commission continues to believe that the Plan, as proposed to be amended, is an achievement in cooperation among the SRO participants, and will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related market surveillance matters that would otherwise be performed by multiple SROs. The Plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the Plan, the Plan promotes, and will continue to promote, investor protection.

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The purpose of the amendment is to add NASDAQ as an SRO participant. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay, particularly in light of the Commission's recent approval of NOM, NASDAQ's new options facility.[14] In addition, the Commission notes that the prior version of this Plan was published for comment, and the Commission did not receive any comments thereon.[15] Finally, the Commission does not believe that the amendment to the Plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4–551.

It is therefore ordered, pursuant to Section 17(d) of the Act,[16] that the Plan, as amended on March 31, 2008, made by and between Amex, BSE, CBOE, ISE, FINRA, NASDAQ, NYSE Arca, and Phlx filed pursuant to Rule 17d–2 is hereby approved and declared effective.

It is further ordered that those SRO participants that are not the DOSR as to a particular common member are relieved of those regulatory responsibilities allocated to the common member's DOSR under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8195 Filed 4–16–08; 8:45 am]

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[14] *See supra* note 13.

[15] *See supra* note 11 (citing to Securities Exchange Act Release No. 56941).

[16] 15 U.S.C. 78q(d).

[17] CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[File No. SR–NYSEArca–2008–19]

In the Matter of: NYSE Arca, Inc.; Order of Summary Abrogation

April 11, 2008.

Securities Exchange Act of 1934, Release No. 57648.

Notice is hereby given that the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 (''Act''),[1] is summarily abrogating a certain proposed rule change of NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'').

On February 13, 2008, NYSE Arca filed SR–NYSEArca–2008–19. The proposed rule change amended NYSE Arca Equities Rule 7.31(x) to expand the permissible order entry time and eligibility of its ''Primary Only'' order type (''PO Order''). The filing was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[2]

NYSE Arca's PO Order is a market or limit order that is routed to the primary, listing market, without sweeping the NYSE Arca book.[3] The proposed rule change modified the PO Order type to permit PO Orders to be entered at any time and to offer an order modifier for Users to designate PO Orders that are eligible for entry and execution throughout the trading day.[4] Previously, NYSE Arca restricted PO Orders to participation in the primary, listing market opening. Specifically, the amended rule permits NYSE Arca Equities system Users to enter a PO Order during any of the Exchange's trading sessions and be routed immediately to the primary, listing market for execution. If the order is not immediate-or-cancel, it remains at the primary, listing market until executed or cancelled that day.

Pursuant to Section 19(b)(3)(C) of the Act,[5] at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,[6] the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act[7] and reviewed in accordance with Section 19(b)(2) of the Act,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Archipelago Securities, Inc. (''Arca Securities'') is a member of the NYSE and an affiliate of the NYSE. The Commission in the past has expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[9] The proposed rule change raises this issue by expanding the activities of Arca Securities in sending orders to its affiliate, the NYSE. Thus, the Commission believes that the proposed rule change should be subject to notice and comment and review pursuant to Sections 19(b)(1) and 19(b)(2) of the Act.[10] In addition, the Commission believes that the issue of whether the routing of PO Orders by Arca Securities to the NYSE is consistent with existing NYSE and NYSE Arca rules should be subject to this same notice and comment and review process.[11]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[12] that File No. SR–NYSEArca–2008–19, be and hereby is, summarily abrogated. If NYSE Arca chooses to re-file the proposed rule change, it must do so pursuant to Sections 19(b)(1)[13] and 19(b)(2) of the Act.[14]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8215 Filed 4–16–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57644; File No. SR–Amex–2008–32]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Allocation of Executed Options Contracts

April 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2008, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to modify the allocation in Exchange Rule 935–ANTE relating to electronically executed option contracts. The text of the proposed rule change is available on the Amex's Web site at *http://www.Amex.com*, at the Office of the Secretary, the Amex and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

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[1] 15 U.S.C. 78s(b)(3)(C).

[2] 15 U.S.C. 78s(b)(3)(A). *See* Securities Exchange Act Release No. 57377 (February 25, 2008), 73 FR 11177 (February 29, 2008).

[3] NYSE Arca Rule 7.31(x).

[4] *See* NYSE Arca Rule 1.1(yy) for the definition of ''User.''

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(1).

[7] 15 U.S.C. 78s(b)(1).

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 FR (March 6, 2006) (order approving SR–NYSE–2005–77).

[10] 15 U.S.C. 78s(b)(1) and 78s(b)(2).

[11] See NYSE Rule 2B; NYSE Arca Rule 3.10; NYSE Arca Equities Rule 3.10; and Securities Exchange Act Release Nos. 53382, supra note 9; 53383 (February 27, 2006), 71 FR 11271 (March 6, 2006) (order approving SR–PCX–2005–134); and 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (order approving SR–PCX–2005–90).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C, 78s(b)(1).

[14] 15 U.S.C, 78s(b)(2).

[15] 17 CFR 200.30–3(a)(58).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to revise the allocation formula set forth in Rule 935—ANTE (''Allocation of Executed Contracts'') when a specialist is on parity for option orders of five (5) contracts or less that are delivered and executed electronically in ANTE. Specifically, the proposal provides that if the specialist is quoting at the Amex best bid or offer (the ''ABBO''), after public customer market and marketable limit orders have been executed, the specialist will be entitled to receive the entire allocation of orders for five (5) contracts or less.[5]

Current Rule 935—ANTE provides that if the specialist is eligible for an allocation, the specialist is entitled to receive an allocation (not to exceed the size of the specialist's quote) equal to the greater of either:

(i) The number of executed contracts to be allocated to the specialist based upon the percentages set forth below;

Number of market participants* on parity	Approximate number of contracts allocated to the specialist (percent)
1	60
2–4	40
5–7	30
8–15	25
16 or more	20

* Not including non-broker-dealer customers.

or

(ii) The number of executed contracts the specialist would be otherwise entitled to pursuant to the allocation algorithm (the ''Allocation Algorithm'').

Allocation Algorithm

The Allocation Algorithm provides that when more than one market participant is quoting at the ABBO, the ANTE System allocates executed contracts to non-broker-dealer customers first and then to all other market participants based upon the following:

((Component A Percentage + Component B Percentage)/2) * Number of Executed Contracts)).

- Component A (Parity Component)—the percentage used for Component A is an equal percentage, derived by dividing 100 by the number of market participants quoting at the ABBO.
- Component B (Size Pro Rata Component)—the percentage to be used for Component B is the percentage that the size of each market participant's quote or order at the ABBO represents relative to the total number of contracts in the disseminated quote.

Final Weighting—A weighted average of the percentages derived for Components A and B is calculated, and then multiplied by the size of the incoming order. Currently, the weighting of Components A and B is equal.

The proposed revision to Rule 935—ANTE permits the specialist to receive a 100% allocation after marketable non-broker-dealer customer orders are executed for orders of five (5) contracts or less. A specialist will not receive any portion of an allocation unless it is quoting at the ABBO at the time ANTE receives the executable order. In addition, the size associated with the specialist's quote must be sufficient to fill the portion of the order that would be allocated to it.

The proposal also specifies that, on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for five (5) contracts or less executed by specialists, and will reduce the size of the orders included in this provision if such percentage is over 40%.[6]

The Exchange believes that the proposal will provide greater incentive for specialists to competitively quote based on both price and size and therefore will benefit the marketplace.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Act in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

The Exchange notes that the proposed rule change is based on similar proposals approved by the Commission.[11] The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the

[5] *See* Securities Exchange Act Release Nos. 42808 (May 22, 2000), 65 FR 34515 (May 30, 2000)(ISE Rule 713) and 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (Phlx Rule 1014(g)).

[6] Supplementary Material .01(c) to International Securities Exchange, LLC (''ISE'') Rule 713 excludes, for purposes of calculating the percentage of volume executed on the ISE consisting of orders of 5 contracts or less, the volume resulting from the execution of orders in its Facilitation Mechanism. Unlike ISE, the Exchange's ANTE system does not have a similar facilitation mechanism or platform.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[11] *See supra* note 5.

public interest. The Commission notes that the proposed rule change is substantially similar to provisions in the rules of two other exchanges.[12] The Commission believes that, because the proposed rule change raises no new regulatory issues, it is consistent with the protection of investors and the public interest to permit Amex to implement the proposal without needless delay.[13] Therefore, the Commission designates the proposal as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2008–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–32 and should be submitted on or before May 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8194 Filed 4–16–08; 8:45 am]

BILLING CODE 8010–01–P

[12] *See supra* note 5.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57645; File No. SR–Amex–2008–35]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify That Current Limitations on the Trade Allocation Match for Registered Traders in ETFs Also Apply to DARTs

April 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. Amex filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend Commentary .01 to its Rule 157–AEMI to clarify that certain limitations currently applicable to its market makers, who enter quotations in exchange-traded funds (''ETFs'') into the AEMI system from the floor of the Exchange (known as ''Registered Traders''), are also applicable to its market makers in ETFs who enter quotations into AEMI from an off-floor location (known as ''Designated Amex Remote Traders'' or ''DARTs''). These limitations address whether ETF market makers that have a relationship with the same member organization may trade in the same security at the same time. The proposed rule change would provide that, if such ETF market makers are allowed to trade in the same security at the same time, the current limit on the trade allocation match that the related market makers may receive would not depend on whether their respective quotes are entered from on or off the floor of the Exchange (*i.e.*, whether they are Registered Traders or DARTs). The purpose of these limitations is therefore to ensure fairness in trading crowds.

The text of the proposed rule change is available on Amex's Web site at *http://www.amex.com,* at the Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Commentary .01 to the Exchange's Rule 157–AEMI currently prohibits Registered Traders (*i.e.,* market makers in ETFs who enter quotations in the form of Crowd Orders into the AEMI system from the floor of the Exchange)

that have a relationship with the same member organization from trading in the same security at the same time: (i) if they are ''affiliated'' (as defined in the Exchange's rules); or (ii) in the event they are not ''affiliated,'' if the member organization's combined share of their profits and/or losses exceeds 100% of these profits and/or losses. Further, even if two or more such related Registered Traders are permitted to trade in the same security at the same time based on the foregoing criteria, Commentary .01 to Rule 157–AEMI limits them to the trade allocation match they could get if there were only two of them in the trading crowd. The purpose of the foregoing restrictions is to ensure fairness in trading crowds by preventing a single firm or joint account from ''packing the crowd'' in order to increase that entity's match.

Amex recently adopted changes to its rules creating a new class of off-floor market makers in ETFs that trade on the Exchange.[5] These market makers (*i.e.*, DARTs), although located off-floor and not physically part of the trading crowd, nonetheless also enter their quotations in the form of Crowd Orders into AEMI from their off-floor locations. The Exchange desires to clarify its intent that the foregoing limitations on the Exchange's ETF market makers should not depend on whether their respective quotations are entered from on or off the floor of the Exchange (*i.e.*, whether the market makers are Registered Traders or DARTs). In other words, a member organization, having one or more Registered Traders on the floor of the Exchange, should not be provided with an incentive to create a DART simply to increase the combined trade allocation match that could be received from the same level of market making activity. Such an outcome would not be consistent with the Exchange's policy of ensuring fairness in trading crowds.

Consequently, the Exchange proposes to add an additional paragraph to Commentary .01 of Rule 157–AEMI to clarify that a DART, having a relationship with the same member organization as a Registered Trader in the same security, shall be treated as if it were another Registered Trader under the provisions of Commentary .01 for the purposes of: (i) determining whether it and the Registered Trader may trade in that security at the same time; and (ii) applying the limitation on the trade allocation match they may receive even if they are permitted to trade in that security at the same time. The proposed rule change would also require the DART to provide certain relationship documentation that a Registered Trader in the same situation would be required to provide.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has asked the Commission to designate the proposal as operative as of filing. The Commission hereby grants Amex's request.[10] The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and the public interest because, by clarifying that the existing rule relating to ETF market maker allocations applies to DARTs, it will eliminate immediately any incentive for an Amex registered trader to establish a DART in order to obtain an unfair trade allocation.

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2008–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days

[5] *See* Securities Exchange Act Release No. 57241 (January 31, 2008), 73 FR 7335 (February 7, 2008) (SR–Amex–2007–138).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange satisfied the five day pre-filing notice requirement.

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–35 and should be submitted on or before May 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E8–8277 Filed 4–16–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57642; File No. SR–CBOE–2006–105]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, To List for Trading Binary Options on Broad-Based Indexes

April 9, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 29, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CBOE filed Amendment No. 1 to the proposed rule change on September 6, 2007.[3] CBOE filed Amendment No. 2 to the proposed rule change on April 4, 2008.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to enable the initial and continued listing and trading on the Exchange of binary options on board-based indexes. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.cboe.org.legal.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to enable the listing and trading on the Exchange of binary options on broad-based indexes. Binary options have an exercise settlement amount that is equal to the applicable exercise settlement value multiplied by the applicable contract multiplier. The exercise settlement value would be an amount determined by the Exchange on a class-by-class basis and would be greater or equal to $10 and less than or equal to $1,000. The contract multiplier also would be established on a class-by-class basis and at least one. A binary option would be automatically exercised if the settlement value of the underlying index equals, exceeds, or is less than the exercise price, depending on the type of the option (*i.e.*, call or put). Binary options would be based on the same framework as existing standardized options that are traded on the Exchange and other options exchanges; however, the payout of a binary option is contingent upon the occurrence of the option being ''in'' or ''at-the-money'' versus the degree to which the option is ''in-the-money.'' As a result, payout at expiration would be an ''all-or-nothing'' occurrence.

(1) Characteristics of Binary Options

The proposed binary options would be European-style and would have an exercise settlement amount that is based on the exercise price in relation to the settlement value of the underlying broad-based index at expiration. After a particular binary option class has been approved for listing and trading on the Exchange, the Exchange may open for trading series of options on that class. In order to afford investors maximum flexibility, binary option series may expire from one day up to 36 months from the time that they are listed. Binary options would be quoted based on the existing strike intervals utilized for traditional index options (*e.g.*, $2.50 per contract if the index is below 200 and $5.00 per contract is the index is above 200) with minimum price variations, established by class, to be no less than $0.01.

At expiration, a binary option would pay out an exercise settlement amount equal to the exercise settlement value multiplied by the contract multiplier. Unlike traditional index options, the value of the payout is not affected by the magnitude of the difference between the underlying index and the exercise price. Rather the payout would be a set amount contingent upon whether the settlement value of the underlying index is: (1) Equal to or above the exercise price at expiration for a binary call option; or (2) below the exercise price at expiration for a binary put option.

(2) The OTC Market

Binary options have been traded in the over-the-counter (''OTC'') market for many years. However, OTC binary options have certain disadvantages. OTC binary options are typically offered by an institution on a non-fungible basis so the customer can purchase or close out the option only from the particular institution that is issuing the option. As a result, OTC binary options lack transparency and a trading market (liquidity). The Exchange's proposal is intended to provide the market for binary options with a standardized product without the credit risk of an individual issuer. By providing a listed and standardized market for a class of binary options, the Exchange seeks to attract investors who desire a binary option but at the same time prefer the certainty and safeguards of a regulated and standardized marketplace.

Binary options are designed to be a simplified version of traditional, exchange-traded options and to provide investors with a simple product with an easy to understand risk profile.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety.

[4] Amendment No. 2 replaces the original filing and Amendment No. 1 in their entirety.

(3) Simplicity

Binary options are easier to understand and utilize than traditional options because of the manner of their payout (*i.e.*, set exercise settlement amount if underlying closes at, below, or above the exercise price) and because they are cash-settled. A significant benefit of a binary option is that the buyer and writer of the option know the expected return at the time of purchase if the underlying index performs as expected. In contrast, the ''traditional'' option does not typically have a known return at the time of purchase, *i.e.*, the return cannot be accurately determined until the option is nearing expiration due to price movements. In addition, because the return on the binary option is a set amount, a buyer of a binary option does not need to determine the absolute magnitude of the underlying index's price movement relative to the exercise price, as is the case with traditional options.

(4) Risk Transparency

In addition, unlike traditional options where a writer has unlimited risk, the maximum obligation in connection with a binary option is known when the contract is written. And, unlike with an OTC binary option, counter-party credit risk is significantly reduced through the issuance and guarantee of the contracts by The Options Clearing Corporation (''OCC'').

(5) Liquidity

As an exchange-traded option, binary options would have the advantage of liquidity provided by market makers, and therefore, spreads should be tighter than in the OTC market. Further, the Exchange believes that standardization would enable more interested parties to become market participants. In other words, CBOE's proposal offers a more transparent and level playing field than the OTC market.

Discussion of Particular Rules

(1) Definitions (Proposed Rule 22.1)

Proposed Chapter XXII includes new proposed definitions applicable to binary options in Rule 22.1. In particular, the terms ''binary option,'' ''exercise price,'' ''exercise settlement amount,'' ''contract multiplier,'' and ''reporting authority'' would be defined. In addition, the term ''call binary option'' would be defined to mean an option that returns an exercise settlement amount if the settlement value of the underlying broad-based index is at or above the exercise price at expiration (*i.e.*, in- or at-the-money). Also, the term ''put binary option'' is defined to mean an option that returns an exercise settlement amount if the settlement value of the underlying broad-based index is below the exercise price at expiration (*i.e.*, in-the-money).

Further, the term ''settlement value'' would be defined to mean the value of the underlying broad-based index that is used to determine whether a binary option is in, at, or out of the money. For a binary option on a broad-based index on which traditional options on the same broad-based index are a.m.-settled, the ''settlement value'' is the reported opening level of such index as derived from the prices of the underlying securities on such day and as reported by the reporting authority for the index. For a binary option on a broad-based index on which traditional options on the same broad-based index are p.m.-settled, the ''settlement value'' is the reported closing level of such index as derived from the prices of the underlying securities on such day and as reported by the reporting authority for the index.

(2) Days and Hours of Business (Proposed Rule 22.2 and Amendment to Rule 6.1)

Proposed Rule 22.2 and an amendment to Rule 6.1, *Days and Hours of Business*, would provide that transactions in binary options overlying any broad-based index may be effected during normal Exchange option trading hours on any business day for other options on the same broad-based index.

(3) Designation of Binary Option Contracts and Maintenance Listing Standards (Proposed Rules 22.3 and 22.4)

Proposed Rule 22.3, *Designation of Binary Options Contracts*, provides that the Exchange may from time to time approve for listing and trading on the Exchange binary options on a broad-based index which has been selected in accordance with Rule 24.2. Binary options would be a class separate from other options overlying the same broad-based index. Proposed Rule 22.3 also would provide that only binary option contracts approved by the Exchange and currently open for trading on the Exchange could be purchased or sold on the Exchange. Binary options dealt in on the Exchange would be designated as to expiration date, exercise price, exercise settlement value, contract multiplier, and underlying index. Binary options on a broad-based index for which traditional options on the same broad-based index are a.m.-settled would also be a.m.-settled, and binary options on a broad-based index for which traditional options on the same broad-based index are p.m.-settled (*i.e.*, S&P 100 Index (''OEX'')) would be p.m.-settled.

To the extent possible, the Exchange would recognize and treat binary options like existing standardized options. Standardized systems for listing, trading, transmitting, clearing, and settling options, including systems used by the OCC, would be employed in connection with binary options. In addition, binary options would have a symbology based on the current system, so that symbols are created that represent the expiration date, exercise price, exercise settlement value, and underlying index.

Proposed Rule 22.3 would provide that, after a particular binary option has been approved for listing and trading on the Exchange, the Exchange could open for trading series of options on that class. Binary option series could be designated to expire from one day up to 36 months from the time that they are listed. The Exchange could add new series of options of the same class as provided for in Rule 24.9 and the related Interpretations and Policies. Additional series of the same binary option class could be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market or to meet customer demand. The opening of a new series of binary options on the Exchange would not affect any other series of options of the same class previously opened.

Proposed Rule 22.4, *Maintenance Listing Standards*, would provide that the maintenance listing standards set forth in Rule 24.2 and the Interpretations and Policies thereunder would be applicable to binary options on broad-based indexes.

(4) Margin Requirements (Amendment to Rule 12.3)

The Exchange is proposing to amend Rule 12.3, Margin Requirements, to include requirements applicable to binary options. Under the proposed requirements, for a Margin Account, no binary option carried for a customer shall be considered of any value for purposes of computing the margin required in the account of such customer. The initial and maintenance margin required on any binary option carried long in a customer's account is 100% of the purchase price of such binary option (*i.e.*, the premium). In connection with a short position in binary options, the customer margin required is the exercise settlement amount. As for spreads, no margin is required on a binary call option (put option) carried short in a customer's account that is offset by a long binary call option (put option) for the same

underlying security or instrument that expires at the same time and has an exercise price that is less than (greater than) the exercise price of the short call (put). The long call (put) must be paid for in full. As for a straddle/combination, when a binary call option is carried short in a customer's account and there is also carried a short binary put option that expires at the same time and has an exercise price that is less than or equal to the exercise price of the short call, the initial and maintenance margin required is the exercise settlement amount applicable to one contract.

For a cash account, a binary option carried short in a customer's account would be deemed a covered position, and eligible for the cash account, if either one of the following is held in the account at the time the option is written or is received into the account promptly thereafter: (1) Cash or cash equivalents equal to 100% of the exercise settlement amount; or (2) a long binary option of the same type (put or call) for the same underlying security or instrument that is paid for in full and expires at the same time, and has an exercise price that is less than the exercise price of the short in the case of a call or greater than the exercise price of the short in the case of a put; or (3) an escrow agreement. The escrow agreement must certify that the bank holds for the account of the customer as security for the agreement cash, cash equivalents, one or more qualified equity securities, or a combination thereof having an aggregate market value of not less than 100% of the exercise settlement amount, and that the bank would promptly pay the member organization the cash settlement amount in the event the account is assigned an exercise notice. The Exchange believes that these proposed levels are appropriate because risk exposure is limited with binary options and the proposed customer initial and maintenance margin would be equal to the maximum risk exposure.[5]

(5) Limitations of Liability of Exchange and of Reporting Authority (Proposed Rule 22.5)

The Exchange proposes in Rule 22.5 to state expressly that Rule 6.7, *Exchange Liability*, shall apply to binary options. Proposed Rule 22.5 also would provide that the rule in CBOE's Index Options rules that disclaims liability on behalf of each reporting authority that is the source of values of any index underlying any class of index options—Rule 24.14—would be applicable with respect to reporting authorities for indexes that underlie binary options.

(6) Position Limits, Position Reporting Requirements, No Exercise Limits, and Other Restrictions (Proposed Rules 22.6 to 22.10)

The Exchange is proposing a two-pronged approach to determine position limits for binary options. In determining compliance with Rule 4.11, the Exchange proposes a fixed position limit of 15,000 contracts for binary options on a broad-based index for which traditional options on the same broad-based index have no position limit, provided that the exercise settlement amount is $10,000. For binary options that have an exercise settlement amount that is not equal to $10,000, the position limit would be 15,000 times the ratio of 10,000 to the exercise settlement amount (*e.g.*, if the binary option exercise settlement amount is $1,000, then the position limit is 150,000 contracts. If the binary option exercise settlement amount is $12,000, then the position limit is 12,500 contracts).

The Exchange proposed a formulaic position limit for binary options on a broad-based index for which traditional options on the same broad-based index have a position limit. The formulaic position limit would be calculated in accordance with the following methodology: (1) Determine the Market Capitalization of the S&P 500 Index; (2) determine the Market Capitalization of the broad-based index underlying the binary option; and (3) calculate the Market Capitalization Ratio of the broad-based index underlying the binary option to the Market Capitalization of the S&P 500 Index. The position limit for binary options subject to a formulaic limit with an exercise settlement amount of $10,000 would be: (1) 10,000 contracts if the Market Capitalization Ratio is greater than or equal to 0.50; (2) 5,000 contracts if the Market Capitalization Ratio is less than 0.50 but greater than or equal to 0.25; and (3) 2,500 contracts if the Market Capitalization Ratio is less than 0.25 but greater than or equal to 0.10. The Exchange would seek Commission approval prior to establishing position limits for binary options on broad-based indexes that have a Market Capitalization Ratio that is less then 0.10. For binary options that have an exercise settlement amount that is not equal to $10,000, the position limit would be the ratio of 10,000 to the exercise settlement amount multiplied by the applicable formulaic limit.

Proposed Rule 22.6 also would provide that positions in binary options on the same broad-based index that have different exercise settlement amounts would be aggregated. In determining compliance with the position limits set forth in proposed Rule 22.6, binary option contracts would not be aggregated with non-binary option contracts on the same or similar underlying security or broad-based index. In addition, binary option contracts on broad-based indexes would not be aggregated with non-binary option contracts on an underlying stock or stocks included within such broad-based index, and binary options on one broad-based index shall not be aggregated with binary options on any other broad-based index.

For purposes of the position limits established under proposed Rule 22.6, a long position in a binary put option and a short position in a binary call option would be considered to be on the same side of the market; and a short position in a binary put option and a long position in a binary call option would be considered to be on the same side of the market. Binary options would not be subject to the hedge exemption to the standard position limits found in Rule 4.11. Under proposed Rule 22.6, the following qualified hedge exemption strategies and positions would be exempt from the established binary option position limits: (1) A binary option position ''hedged'' or ''covered'' by an appropriate amount of cash to meet the settlement obligation (*e.g.*, $1,000 for a binary option with an exercise settlement amount of $1,000); (2) a binary option position ''hedged'' or ''covered'' by a sufficient amount of a related or similar security to meet the settlement obligation; or (3) a binary option position ''hedged'' or ''covered'' by a traditional option covering the same underlying broad-based index sufficient to meet the settlement obligation.

Binary options would not be subject to exercise limits due to the fact that they are European-style options and would be automatically exercised at expiration if the settlement value of the underlying index is equal to or greater than the exercise price of a binary call option or less than the exercise price in the case of a binary put option. Proposed Rule 22.7 confirms this.

Proposed Rule 22.8, *Reports Related to Position Limits and Liquidation of Positions*, would state that references in Rules 4.13, *Reports Related to Position Limits*, and 4.14, *Liquidation of Positions*, to Rule 4.11 in connection

[5] In accordance with Rule 12.10, *Margin Required is Minimum*, the Exchange has the ability to determine at any time to impose higher margin requirements than those described above in respect of any binary option position when it deems such higher margin requirements are appropriate.

with position limits would be deemed, in the case of binary options, to be to Rule 22.6. As such, in accordance with Rule 4.13(a), a position in binary options would have to be reported to the Exchange via the Large Option Positions Report when an account establishes an aggregate same side of the market position of 200 or more binary options. In computing reportable binary options under existing Rule 4.13: (1) Positions in binary options that have different exercise settlement amounts would be aggregated; (2) a position in a binary option would not be aggregated with a non-binary position in a option on the same or similar underlying security or broad-based index; (3) a position in a binary option on a broad-based index would not be aggregated with a position in a non-binary option on an underlying stock or stocks included within such broad-based index; and (4) a position in a binary option on one broad-based index would not be aggregated with a position in a binary option on any other broad-based index. The Exchange believes that the reporting requirements and the surveillance procedures for hedged positions would enable the Exchange to closely monitor sizable positions and corresponding hedges.

Proposed Rule 22.9 would provide that binary options are not subject to Rule 4.16(b) and Interpretation and Policy .01 under Rule 4.16; this is because Rule 4.16(b) is relevant only for American-style options and Interpretation and Policy .01 under Rule 4.16 is relevant only for options that are settled by delivery of an underlying security. Paragraph (a) of Rule 4.16, which provides the Exchange's Board with the power to impose restrictions on transactions in one or more series of options of any class dealt in on the Exchange, as the Board in its judgment determines advisable in the interests of maintaining a fair and orderly market or otherwise deems advisable in the public interest, is applicable to binary options.

(7) Determination of Exercise Price (Proposed Rule 22.10)

The Exchange proposes in Rule 22.10 to provide that the determination of whether binary options are in, at, or out of the money at expiration would be a function of the settlement value of the underlying broad-based index in relation to the type of binary option (*i.e.*, put or call) and the exercise price.

(8) Trading Mechanics for Binary Options (Proposed Rules 22.11 to 22.16)

The Exchange intends to trade binary options similar to the manner in which it trades other index options. Under the proposed rules, trading in binary options would be conducted in the following manner:

• *Trading Rotations (Proposed Rule 22.11):* Trading rotations generally would be conducted through use of the Hybrid Opening System (''HOSS''), which is described in existing Rule 6.2B. In addition, Rules 6.2, *Trading Rotations*, 6.2A, *Rapid Opening System*, and 24.13, *Trading Rotations*, would apply to binary options.

• *Trading Halts and Suspension of Trading (Proposed Rule 22.12):* The trading halt procedures contained in existing Rules 6.3 and 6.3B and 24.7 would apply to binary options.

• *Premium Bids and Offers; Minimum Increments; Priority and Allocation (Proposed Rule 22.13):* All bids and offers would be deemed to be for one contract unless a specific number of option contracts is expressed in the bid or offer. A bid or offer for more than one option contract which is not made all-or-none would be deemed to be for that amount or any lesser number of options contracts. An all-or-none bid or offer would be deemed to be made only for the amount stated. All bids and offers made for binary option contracts related to an underlying index would be governed by Rules 6.41, *Meaning of Premium Bids and Offers*; 6.42, *Minimum Increments for Bids and Offers*; 6.44, *Bids and Offers in Relation to Units of Trading*; 6.45, *Priority of Bids and Offers—Allocation of Trades*; 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*; and 24.8, *Meaning of Premium Bids and Offers*, as applicable. The minimum price variation (''MPV'') would be established on a class-by-class basis by the Exchange and would not be less than $0.01. The rules of priority and order allocation procedures set forth in Rule 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, would apply to binary options.[6]

• *Maximum Bid-Ask Differentials; Market-Maker Appointments & Obligations (Proposed Rule 22.14):* Proposed Rule 22.14 would provide that a market maker is expected to bid and offer so as to create differences of no more than 25% of the designated exercise settlement value between the bid and offer for each binary option contract or $5.00, whichever amount is wider, except during the last trading day prior to the expiration where the maximum permissible price differential for binary options may be 50% or $5.00, whichever amount is wider. Proposed Rule 22.14 also would provide that the market maker appointment process for binary option classes would be the same as the appointments for other options, as set out in existing Rules 8.3, *Appointment of Market-Makers*; 8.4, *Remote Market-Makers*; 8.14, *Index Hybrid Trading System Classes: Market-Maker Participants*; 8.15, *Lead Market-Makers and Supplemental Market-Makers in Non-Hybrid and Hybrid 3.0 Classes*; 8.15A, *Lead Market-Makers in Hybrid Classes*; and 8.95, *Allocation of Securities and Location of Trading Crowds and DPMs*.

• *Automatic Exercise of Binary Option Contracts (Proposed Rule 22.15):* Proposed Rule 22.15 would provide that a binary option would be automatically exercised at expiration if the settlement value of the underlying broad-based index is equal to or greater than the exercise price of a binary call option or less than the exercise price in the case of a binary put option. Rules 11.2 and 11.3 would not apply to binary options.

• *FLEX Trading Rules (Proposed Rule 22.16):* Proposed Rule 22.16 would provide that, in addition to Hybrid, binary options would be eligible for trading as Flexible Exchange Options as provided for in Chapter XXIVA and XXIVB. For purposes of Rules 24A.4 and 24B.4, the applicable exercise settlement amount would be designated by the parties to the contract, the parties to the contract cannot designate an Exercise Style other than European-style, and the term ''index multiplier'' as used in those rules would refer to the ''contract multiplier'' as defined in Chapter XXII. Rules 24A.7 and 24B.7 would not apply to binary options and the position limit methodology set forth in Rule 22.6 would apply. Rules 24A.9 and 24B.9, regarding minimum quote width, would not apply to binary options and the minimum quote width set forth in Rule 22.14 would apply.

OCC Rule Filing; Options Disclosure Document

The OCC has amended its By-Laws and Rules to accommodate the listing and trading of binary options.[7] In addition, CBOE understands that the OCC has submitted to the Commission a proposed Supplement to the Options Disclosure Document (''ODD'') to accommodate binary options on board based indexes.

[6] Proposed Rule 22.13 would conform to Article XIV, Section 3A of OCC's By-Laws with respect to adjustments of binary options. *See* Securities Exchange Act Release No. 56875 (November 30, 2007), 72 FR 69274 (December 7, 2007) (SR–OCC–2007–08).

[7] *See* Securities Exchange Act Release No. 56875 (November 30, 2007), 72 FR 69274 (December 7, 2007) (SR–OCC–2007–08).

Systems Capacity

CBOE represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of binary options as proposed herein. CBOE does not anticipate that there would be any additional quote mitigation strategy necessary to accommodate the trading of binary options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[8] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–105 and should be submitted on or before May 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8232 Filed 4–16–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57650; File No. SR–CBOE–2008–40]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Provide for Issuance of Interim Trading Permits

April 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is filing this proposed rule change to provide for the issuance of up to 50 Interim Trading Permits.[3] The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.org/Legal*), at CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under Sections 2.1(a) and 12.1 of its Constitution, CBOE must obtain, but has not yet obtained, membership approval for the issuance of the Interim Trading Permits and the amendments to its Constitution contemplated in this proposed rule change. Once it has obtained that membership approval, CBOE plans to file a technical amendment to this proposed rule change to reflect that approval.

rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing this proposed rule change to provide for the issuance of up to 50 Interim Trading Permits. These permits will grant the same trading privileges on the Exchange as transferable Exchange memberships. The Exchange is seeking the authority to issue these permits to address the demand for trading access to the Exchange to the extent that a shortage exists from time to time in the number of transferable Exchange memberships available for lease. Issuances of Interim Trading Permits under Proposed Rule 3.27(b).

Under proposed Rule 3.27(b), the Exchange may issue one or more Interim Trading Permits, subject to the limit on the number of such permits, to address shortages in the number of transferable memberships available for lease. Consistent with this purpose, such permits may be issued only if the Exchange determines in its sole discretion that there are insufficient transferable Exchange memberships available for lease at that time at a rate reasonably related to the indicative lease rate to meet existing demand for such leases,[4] and that it would be in the interest of fair and orderly markets to provide additional trading access under the circumstances (collectively, the ''issuance findings'').[5]

In the event that circumstances justify the issuance findings and the Exchange consequently determines to issue Interim Trading Permits, the Exchange will announce the number of Interim Trading Permits that the Exchange determines to make available (limited by the number that are available for issuance), that the Exchange is taking applications for such permits, the process the Exchange will follow in issuing such permits (described in the bullets below), and the beginning and ending dates during which period of time individuals and organizations must submit applications for such permits. An individual or organization must be approved and satisfy all requirements for membership in the Exchange to be eligible to apply for an Interim Trading Permit to be issued under proposed Rule 3.27(b). In addition, an individual will be eligible to receive no more than one Interim Trading Permit in connection with a particular issuance of Interim Trading Permits pursuant to proposed Rule 3.27(b), with a maximum of eight such permits for a member organization and individuals and member organizations affiliated with the member organization in connection with that issuance.

Each issuance of Interim Trading Permits pursuant to proposed Rule 3.27(b) will occur in accordance with one of the following objective processes:

- Random Lottery Process. After the deadline for applications has passed, the Exchange, through a random lottery process, will issue a number of Interim Trading Permits to applicants equal to the number of Interim Trading Permits that the Exchange announced it would make available.
- Order in Time Process. After the deadline for applications has passed, the Exchange will issue an Interim Trading Permit to each applicant who applied for such a permit in the order in time that such applicant applied, until the number of Interim Trading Permits that the Exchange announced it would make available have been issued.
- Other Process. The Exchange will have the authority to modify the processes described above or to establish any other process to issue Interim Trading Permits pursuant to a rule filing submitted to the Commission under Section 19(b) of the Exchange Act.[6]

The Exchange believes that these processes will provide for the issuance of Interim Trading Permits in an objective manner and consequently will provide for fair access to the Exchange. At the same time, the Exchange will have the flexibility to determine which process it will follow in connection with a particular issuance of permits. The Exchange believes that this flexibility is needed to allow it to determine the most efficient way to issue Interim Trading Permits in any given situation.

Overall, the Exchange believes that the ability to issue Interim Trading Permits provides the Exchange with the ability to address, from time to time, situations in which the demand for full trading access to the Exchange exceeds the supply of transferable memberships available for lease. In light of that justification, proposed CBOE Rule 3.27(b) only allows Interim Trading Permits to be issued in circumstances when the Exchange is able to make the issuance findings. Increasing the number of market participants in that situation should promote market liquidity and help promote the fair and orderly character of CBOE's markets.

Requirements for Maintaining Interim Trading Permits

Recipients of Interim Trading Permits and all of their associated persons must remain in compliance with paragraph (f) of proposed CBOE Rule 3.27. In particular, subparagraph (f)(ii) of proposed CBOE Rule 3.27 provides that they must remain in good standing and must pay all applicable fees, dues, assessments and other like charges assessed against CBOE members. Further, subparagraph (f)(i) of proposed CBOE Rule 3.27 provides that holders of Interim Trading Permits and all of their associated persons are subject to the regulatory jurisdiction of the Exchange under the Exchange Act and the Constitution and Rules of the Exchange, including the Exchange's disciplinary jurisdiction under Chapter XVII of the Exchange's Rules.[7]

In addition, holders of Interim Trading Permits must pay to the Exchange a monthly access fee. This monthly access fee will be established and adjusted through proposed rule change(s) that will be filed with the Commission under Section 19(b)(3)(A) of the Act.[8] The monthly access fee will be due and payable in accordance with the provisions of the Exchange Fee Schedule and will be the same for all Interim Trading Permit holders.

[4] The ''indicative lease rate'' will be the highest ''clearing firm floating monthly rate'' of the Clearing Members that assist in facilitating at least 10% of the transferable membership leases. The ''clearing firm floating monthly rate'' will be the floating rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate. This is based on the method the Exchange currently is using to determine the access fee for persons who are Temporary Members under Interpretation and Policy .02 of Rule 3.19. *See, e.g.*, Securities Exchange Act Release No. 57411 (March 3, 2008), 73 FR 12478 (March 7, 2008) (notice of filing and immediate effectiveness of File No. SR–CBOE–2008–25).

[5] The reference to this last finding does not imply that the Exchange's markets might not be fair and orderly if there were insufficient permits to satisfy completely the additional demand for trading access. Instead, this finding ensures that additional permits are not issued—regardless of the extent of such demand—if the issuance of such permits would be contrary to the interests of a fair and orderly market.

[6] 15 U.S.C. 78s(b).

[7] In this regard, for instance, Interim Trading Permits may be suspended or revoked as a result of a disciplinary action under the amendments proposed for Rule 17.1.

[8] 15 U.S.C. 78s(b)(3)(A).

Nature of Rights Under Interim Trading Permits

As provided in subparagraph (e)(i) of proposed CBOE Rule 3.27, the holder of an Interim Trading Permit will enjoy the same trading privileges on the Exchange as the holder of a transferable Exchange membership. Those rights include the right to trade on the CBOE Stock Exchange (''CBSX'') and, as provided in Rule 3.29, the trading rights on the Exchange necessary to become a member of OneChicago, LLC. This subparagraph also provides that an organization that holds an Interim Trading Permit or that has an Interim Trading Permit registered for it shall be treated the same as a ''member organization'' for purposes of the Rules.[9] As provided in subparagraph (g)(iii) of proposed CBOE Rule 3.27, an Interim Trading Permit will be non-transferable, except that in a form and manner prescribed by the Exchange (1) a member organization may change the designation of the nominee in respect of each Interim Trading Permit it holds, and (2) an individual Interim Trading Permit holder at any time after the issuance of that Interim Trading Permit may transfer that Interim Trading Permit to a member organization with which such individual is then associated.

Under proposed Section 2.6 of the Constitution and subparagraph (g)(i) of proposed CBOE Rule 3.27, Interim Trading Permit holders will have the same voting and petition rights as regular members, except that Interim Trading Permit holders will have no right to vote or petition concerning (1) issues that relate to Exchange ownership matters, including without limitation those matters related to demutualization, mergers, consolidations, dissolution, liquidation, transfer, or conversion of assets of the Exchange, and (2) matters that relate to Article Fifth(b).[10] Similarly, under proposed Section 2.1(c) of the Constitution and subparagraph (g)(ii) of proposed CBOE Rule 3.27, Interim Trading Permit holders will have no interest in the assets or property of the Exchange, and will have no right to share in any distribution by the Exchange.[11]

To address the fair representation requirements in Section 6(b)(3) of the Exchange Act,[12] proposed Section 4.1(a) of the Constitution provides that an Interim Trading Permit holder, or an officer of an Interim Trading Permit holder, will be eligible to serve on the Nominating Committee in one of the six floor member and firm member positions on the Nominating Committee, notwithstanding the fact that the holder of an Interim Trading Permit is not a regular member or an officer of a regular member. In addition, under proposed Section 6.1(a) of the Constitution, an Interim Trading Permit holder or the executive officer of an Interim Trading Permit holder will be eligible to serve in one of the at-large director positions on the Board of Directors of the Exchange.[13] To clarify that an Interim Trading Permit holder will be able to serve only as an at-large director, proposed Rule 3.27(h)(iii) provides that the holding of an Interim Trading Permit does not satisfy the requirement in Section 6.1(a) of the Constitution to own and control a membership for purposes of the definitions of floor director and lessor director in that section. Finally, proposed Rule 3.27(e)(i) provides that, except as provided in the Constitution, an Interim Trading Permit holder will be eligible to serve on any Exchange committee to the same extent that a member can serve on that committee.

Duration of Interim Trading Permits and Transfer of Interim Trading Permit Holders to Open Leases

As provided in paragraph (c) of proposed CBOE Rule 3.27, an Interim Trading Permit will remain in effect until the earlier of one of the following events: (i) A transaction is consummated pursuant to which either CBOE is converted into a stock corporation or memberships in CBOE are converted into stock (collectively, a ''Demutualization Transaction''), (ii) the holder of the Interim Trading Permit notifies the Exchange in a form and manner prescribed by the Exchange that the holder is terminating that Interim Trading Permit, (iii) the Interim Trading Permit is terminated as a result of a regulatory action by the Exchange,[14] or (iv) the Exchange terminates all Interim Trading Permits through a rule filing approved by the Commission pursuant to Section 19(b) of the Act.[15] Subparagraph (e)(ii) of proposed Rule 3.27 provides that, in the event of a Demutualization Transaction, holders of Interim Trading Permits will be guaranteed to receive trading permits on the same terms as holders of transferable Exchange memberships who are eligible to receive trading permits in connection with that transaction. This guarantee ensures that there is no disruption in trading access in the event of such a Demutualization Transaction and thereby helps promote the fair and orderly character of the Exchange's markets and helps ensure that holders of Interim Trading Permits are treated fairly in such a transaction and are not unfairly deprived of trading access to the Exchange.

Because Interim Trading Permits can be issued to provide trading access under specified conditions, those permits should continue to be available for those purposes if they no longer are being used by their original recipients. Accordingly, paragraph (c) of proposed Rule 3.27 provides that the Exchange may reissue an Interim Trading Permit that has been terminated. This paragraph also incentivizes holders to terminate their permits early in the month so that the Exchange is in a position to reissue those permits at the end of the month. In particular, this paragraph requires a holder of an Interim Trading Permit, if the holder fails to notify the Exchange that the holder is terminating that Interim Trading Permit by the fifteenth day of the month, to pay to the Exchange an amount equal to the following month's monthly access fee for an Interim Trading Permit.

Under paragraph (d) of proposed Rule 3.27, the Exchange will endeavor to

[9] The Exchange notes that this provision is limited to the Rules and is subject to the conditions imposed on Interim Trading Permit holder status in the Constitution and Rules, including proposed Section 1.1(b) of the Constitution and proposed Rule 3.27(e)(i).

[10] Under proposed Section 1.1(b) of the Constitution and proposed Rule 3.27(e)(i), Interim Trading Permit holders in good standing would be treated the same as members, except as provided in proposed Sections 2.1(c) and 2.6 of the Constitution, and except for purposes of paragraph (b) of Article Fifth of the Certificate of Incorporation, Article Tenth of the Certificate of Incorporation, proposed Section 4.1(a) of the Constitution, proposed Section 6.1(a) of the Constitution, and as may be provided in the Rules. Proposed Rule 3.27(e)(i) further provides that Interim Trading Permit holders would be treated the same as members (except as described in the preceding sentence) notwithstanding any references in the Rules suggesting that Interim Trading Permit holders are members under the Rules.

[11] The Exchange notes that the provisions described in this paragraph and the following paragraph addressing the voting and representation rights of Interim Trading Permit holders are virtually identical to the provisions addressing the voting and representation rights provided to CBSX Permit holders that were approved by the Commission in connection with a previous Exchange rule filing. *See* Securities Exchange Act Release No. 55326 (February 21, 2007), 72 FR 8816 (February 27, 2007) (order approving File No. SR–CBOE–2006–107). The Exchange also notes that proposed CBOE Rule 3.27 is similar to the CBSX Permit holder rule, CBOE Rule 3.26, which the Commission approved in connection with that filing.

[12] 15 U.S.C. 78f(b)(3).

[13] The Exchange also proposes to amend Section 6.1(a) to remove references to a transitional period that are no longer needed because that period has passed.

[14] For example, an Interim Trading Permit may be revoked as a result of a disciplinary action under the amendments proposed for Rule 17.1.

[15] 15 U.S.C. 78s(b).

facilitate the transfer of holders of Interim Trading Permits to transferable memberships that are available for lease. In connection with determining to issue Interim Trading Permits, the Exchange sought and received oral feedback from the Exchange's Lessors Committee. Certain participants on that committee expressed the concern that the issuance of Interim Trading Permits potentially could have a negative affect on the lease market by reducing the demand for leases. This transfer provision is designed to address that concern.

In particular, paragraph (d) of proposed Rule 3.27 will be triggered if the Exchange is notified by one or more lessors that they have transferable Exchange memberships available for lease (''open leases'') at a rate reasonably related to the indicative lease rate, as determined by the Exchange in its sole discretion. It could distort the lease market for Interim Trading Permits to be outstanding while open leases are available at such a rate, so it is appropriate for the Exchange to endeavor to facilitate the transfer of holders of Interim Trading Permits to those open leases.

Accordingly, paragraph (d) of proposed Rule 3.27 provides that, in the event the Exchange receives notifications from lessors that they have open leases, the Exchange will notify each Interim Trading Permit holder of the number of open leases and the names of the lessors with those open leases. As part of that notification by the Exchange, the Exchange will advise each Interim Trading Permit holder that the holder may contact those lessors if the holder is interested in transferring to an open lease.[16] The Exchange notes that a transfer to an open lease is entirely voluntary for Interim Trading Permit holders.[17]

If, after a reasonable period of time following this process, a lessor notifies the Exchange that the lessor continues to have an open lease, the Exchange shall compensate that lessor through a monthly payment equal to the indicative lease rate, provided that lessor is offering for lease the transferable membership subject to the open lease at a rate reasonably related to the indicative lease rate, as determined by the Exchange in its sole discretion.[18] If the indicative lease rate changes, the Exchange may modify that monthly payment from time to time so that the payment is equal to that rate. The Exchange has included this compensation provision to address the potential impact that Interim Trading Permits may have on the lease market. As mentioned above, certain participants on the Lessors Committee vocalized concern that Interim Trading Permits potentially could negatively affect the lease market by reducing demand for leases. The Exchange believes that this provision is designed to address that concern.

In the event the Exchange compensates a lessor in this situation, the Exchange will not enter into, nor be deemed to have entered into, a lease or other agreement with that lessor. Accordingly, the Exchange will have no rights with respect to that lessor's membership, including without limitation the right to trade on the Exchange or the right to vote. The lessor may at any time thereafter lease that membership to any qualified individual or organization and will be required to notify the Exchange in the event of such a lease. The Exchange will cease compensating the lessor if it receives such a notification or otherwise learns the lessor has leased that membership, and may recoup from the lessor any compensation paid pursuant to proposed Rule 3.27(d) to the lessor for any period of time during which the lessor has leased that membership. The Exchange has added this provision to clarify that it will have no rights with respect to that membership, and that a lessor may enter into a lease agreement at any time.

The Exchange also may cease compensating that lessor if the Exchange learns an offer to lease that membership at a rate reasonably related to the indicative lease rate, as determined by the Exchange in its sole discretion, has been declined by that lessor. This provision has been added to provide that lessor with an incentive to lease that membership if the opportunity arises. Consistent with the purpose of this transfer provision to assist in filling open leases, the Exchange does not want to be in a position of perpetually compensating certain lessors in the event they have opportunities to lease their memberships.

Finally, in the event that the number of lessors receiving compensation pursuant to this provision becomes greater than the number of outstanding Interim Trading Permits, the Exchange will compensate each such lessor, on a monthly basis, in an amount equal to the current indicative lease rate, as determined by the Exchange in its sole discretion, times the number of holders of such permits divided by the number of such lessors.[19] The Exchange believes this provision is necessary to address the scenario in which the number of open leases exceeds the number of Interim Trading Permits. Under this scenario, the number of open leases over-and-above the number of outstanding permits would indicate a lack of demand for trading access to the Exchange beyond what is being satisfied by Interim Trading Permits. Any compensation the Exchange may pay pursuant to proposed Rule 3.27(d) is not intended to be a substitute for that lack of demand for trading access, and therefore the Exchange has determined in this scenario to compensate lessors on a pro-rata basis from fees paid by Interim Trading Permit holders.

Conforming Changes

The Exchange has made certain conforming changes in its Rules to ensure that individuals and organizations that receive Interim Trading Permits under proposed Rule 3.27 can conduct their activities in a manner similar to holders of Exchange memberships. In particular, subparagraph (h)(ii) of proposed Rule 3.27 provides that an individual Interim Trading Permit holder will have the same ability to register that Interim Trading Permit for a member organization as the holder of an Exchange membership has to register that membership for a member organization under Rule 3.8(c). In addition, that same subparagraph provides that all Rules that apply to an individual member registering a membership for a member organization, or that apply to a member organization that has a membership registered for it, shall also be deemed to apply to an individual Interim Trading Permit holder who has registered that Interim Trading Permit for a member organization, and to a member organization that has an Interim Trading Permit registered for it. Rule 3.8 also has been amended to allow member organizations holding Interim Trading Permits to designate individual nominees and inactive nominees with respect to those permits.

[16] The Exchange also will provide such a notification to each person who is a Temporary Member under Interpretation and Policy .02 of Rule 3.19.

[17] The Exchange also notes that a transfer to an open lease is entirely voluntary for Temporary Members.

[18] The ''indicative lease rate'' will be determined in accordance with proposed Rule 3.27(b). *See supra* note 4.

[19] As a corollary to this provision, the Exchange will cease compensating such lessors during any period when there are no Interim Trading Permits currently outstanding.

Similarly, subparagraph (h)(i)(A) of proposed Rule 3.27 provides that an Interim Trading Permit will be counted as one membership for purposes of the Participation Entitlement provisions in Rule 6.45A(a)(i)(C)(1) and Rule 6.45B(a)(ii)(C)(1). In addition, subparagraph (h)(i)(B) of proposed Rule 3.27 provides that an Interim Trading Permit will be counted as one membership for purposes of the appointment costs provisions in Rule 8.3(c)(v), Rule 8.85(e) and Rule 8.92(d). Notwithstanding the similar treatment of an Interim Trading Permit and a membership for these purposes, subparagraph (h)(i)(A)–(B) also provide that an Interim Trading Permit will not satisfy the requirements in Rule 8.85(e) and Rule 8.92(d) that a DPM or an e-DPM own at least one membership.[20] This is consistent with the original purpose of the DPM and e-DPM membership ownership requirement, which was to require that DPMs and e-DPMs own, instead of lease, at least one Exchange membership in order to ensure that they have a long-term commitment to the Exchange. As discussed above, an Interim Trading Permit holder will have no interest in the assets or property of the Exchange, and will have no right to share in any distribution by the Exchange.

In order further to assure that holders of Interim Trading Permits can conduct their trading activities in a manner similar to the holders of Exchange memberships, subparagraph (h)(i)(C) of proposed Rule 3.27 provides that an Interim Trading Permit will be treated as a separate membership for purposes of the pilot programs referenced in Rule 8.3(c)(vii)(1), Rule 8.3(c)(vii)(2), Rule 8.85(a)(v), Rule 8.93(vii), and subparagraph (b)(viii) of the Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs. These pilot programs allow one Market-Maker affiliated with another Market-Maker, an Off-Floor DPM or an e-DPM to trade in open-outcry in any specific option class allocated to that Market-Maker, Off-Floor DPM or e-DPM, provided such Market-Maker trades on a separate membership. Further, subparagraph (h)(i)(D) of proposed Rule 3.27 provides that an individual Interim Trading Permit holder may satisfy the qualification requirements to be a DPM Designee or SBT DPM Designee as set forth in Rule 8.81(b)(ii) and Rule 44.11(b)(2) by registering the Interim Trading Permit for a DPM or SBT DPM or an affiliate of the DPM or SBT DPM. This subparagraph also provides that a DPM may satisfy the requirement in Rule 8.81(d) by having DPM Designees who have registered their Interim Trading Permits for the DPM.

Other conforming changes have been made to the Rules such that certain requirements related to the holders of memberships will apply to the holders of Interim Trading Permits. In particular, under proposed Rule 3.2(c), individual Interim Trading Permit holders will be required to have authorized trading functions. In addition, proposed Rule 3.3(c) provides that the holding of an Interim Trading Permit satisfies the requirement in that Rule that Clearing Members and order service firms possess at least one membership. Further, under proposed Rule 3.19, the membership status of an Interim Trading Permit holder will automatically terminate at such time that person, among other things, does not hold an Interim Trading Permit. Under this rule, the Exchange also will have the authority to permit such a person to retain that membership status under certain circumstances to enable that person to obtain, among other things, another Interim Trading Permit (subject to the requirements in proposed Rule 3.27). Also, individual Interim Trading Permit holders under proposed Rule 3.24 will be eligible for the member death benefit.

Finally, the Rules have been amended to preserve the Exchange's regulatory authority under the Exchange Act and the Constitution and Rules of the Exchange. In particular, the Exchange will have the authority under proposed Rule 2.23 to revoke an Interim Trading Permit if the holder fails to pay any dues, fees, assessments, charges, fines, or other amounts due to the Exchange within six months after such payment is due. In addition, the Exchange will have the authority under proposed Rules 16.3(c) and 16.4 to suspend or revoke the Interim Trading Permit of a holder that experiences financial difficulty. The Exchange also will have the authority under proposed Rule 17.1 to suspend or revoke an Interim Trading Permit if the holder has been disciplined by the Exchange.

Clarifying Changes Related to CBOE Stock Exchange Permits

In amending the Constitution and Rules to provide for the issuance of Interim Trading Permits, the Exchange determined to make certain changes to clarify how CBOE Stock Exchange Permits currently are treated under the Certificate of Incorporation, Constitution, and Rules. The Exchange believes that these changes are non-substantive in nature because they make explicit the way CBOE Stock Exchange Permits and the holders of such permits currently are treated and do not modify the rights of the holders of such permits.

In particular, the Exchange has amended Section 1.1 of the Constitution to specifically provide that, rather than being defined as members, CBOE Stock Exchange Permit holders will be treated the same as members, except as provided in Sections 2.1(d) and 2.6 of the Constitution, and except for purposes of paragraph (b) of Article Fifth of the Certificate of Incorporation, Article Tenth of the Certificate of Incorporation, Section 4.1(a) of the Constitution, Section 6.1(a) of the Constitution, and as may be provided in the Rules. The Exchange also is proposing a conforming amendment in Rule 3.26(c) to provide that CBOE Stock Exchange Permit holders are treated the same as members (except as described above), rather than being ''deemed'' members, for purposes of the Certificate of Incorporation, Constitution, and Rules. Similarly, the Exchange is proposing to amend this paragraph to provide that CBOE Stock Exchange Permit holders shall be treated the same as members (except as described above) notwithstanding any references in the Rules suggesting that CBOE Stock Exchange Permit holders are members under the Rules. In addition, the Exchange is proposing to amend this paragraph to clarify that an organization that holds a CBSX Permit or that has a CBSX Permit registered for it shall be treated the same as a ''member organization'' for purposes of the Rules. Further, the Exchange is proposing to amend Rule 3.26(e)(i) to clarify that the holding of a CBSX Permit does not satisfy the requirement in Section 6.1(a) of the Constitution to own and control a membership for purposes of the definitions of floor director and lessor director in that section.

The Exchange also has proposed to amend Rule 2.23 to clarify that the Exchange has the authority to revoke a CBOE Stock Exchange Permit if the holder fails to pay any dues, fees, assessments, charges, fines, or other amounts due to the Exchange within six months after such payment is due. Similarly, the Exchange has proposed to amend Rules 16.3(c) and 16.4 to clarify that the Exchange has the authority to suspend or revoke the CBOE Stock Exchange Permit of a holder that experiences financial difficulty. The Exchange also is clarifying that it has the authority under proposed Rule 17.1 to suspend or revoke a CBOE Stock

[20] Proposed Interpretation and Policy .04 of Rule 8.85 and proposed Interpretation and Policy .01 of Rule 8.92 specifically provide that an Interim Trading Permit does not satisfy the membership ownership requirements in those Rules.

Exchange Permit if the holder has been disciplined by the Exchange.

Further, the Exchange is proposing to amend Rule 3.2 to clarify that individuals holding CBOE Stock Exchange Permits are required to have authorized trading functions in accordance with Rule 50.3. In addition, the Exchange is proposing to amend Rule 3.19 to clarify that the membership status of a CBOE Stock Exchange Permit holder will automatically terminate at such time that person, among other things, does not hold a CBOE Stock Exchange Permit. Rule 3.19 also is being amended to clarify that the Exchange would have the authority to allow such a person to retain that membership status under certain circumstances to enable that person to obtain, among other things, another CBOE Stock Exchange Permit (subject to the requirements in Rule 3.26).

2. Statutory Basis

For the reasons described above, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act, in general, and furthers the particular objectives of Section 6(b)(5) of the Exchange Act.[21] In particular, the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[22]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–40 and should be submitted on or before May 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Nancy M. Morris,

Secretary.

[FR Doc. E8–8278 Filed 4–16–08; 8:45 am]

BILLING CODE 8010–01–P

[21] 15 U.S.C. 78f(b) and (b)(5).

[22] *See* 15 U.S.C. 78f(b)(5).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57643; File No. SR–ISE–2008–31]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Fee Changes

April 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2008, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. On April 9, 2008, ISE filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend its Schedule of Fees to establish fees for transactions in options on 5 Premium Products.[6] The text of the proposed rule change is available at the Exchange, on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] In Amendment No. 1, ISE corrected the ticker symbol for the PowerShares DB Gold Fund from DBL to DGL in the purpose section of the Form 19b–4 and in Exhibit 1. ISE also made corresponding changes to the Schedule of Fees in Exhibit 5.

[6] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

Exchange's Web site at *http://www.ise.com,* and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the PowerShares DB Oil Fund (''DBO''), PowerShares DB Silver Fund (''DBS''), PowerShares DB Gold Fund (''DGL''),[7] Ultra Dow30 ProShares (''DDM''),[8] and Ultra Financials ProShares (''UYG'').[9] The Exchange represents that DBO, DBS, DGL, DDM, and UYG are eligible for options trading because they constitute ''Exchange-Traded Fund Shares,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on DBO, DBS, DGL, DDM, and UYG.[10] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders[11] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[12] Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be $0.37 and $0.03 per contract, respectively.[13] Further, since options on DBO, DBS, DGL, DDM, and UYG are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[14] in general, and Section 6(b)(4) of the Act[15] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[16] and Rule 19b–4(f)(2)[17] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal took effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

[7] The PowerShares DB Oil Fund (''DBO'') is based on the Deutsche Bank Liquid Commodity Index—Optimum Yield Oil Excess Return(tm). The PowerShares DB Silver Fund (''DBS'') is based on the Deutsche Bank Liquid Commodity Index—Optimum Yield Silver Excess Return(tm). The PowerShares DB Gold Fund (''DGL'') is based on the Deutsche Bank Liquid Commodity Index—Optimum Yield Gold Excess Return(tm). DBO, DBS and DGL are managed by DB Commodity Services LLC. DGLCI(tm) and Deutsche Bank Liquid Commodity Index(tm) are trademarks of Deutsche Bank AG, London (''DB AG''). PowerShares(r) is a registered service mark of PowerShares Capital Management LLC (''PowerShares''). DBO, DBS and DGL are not sponsored, endorsed, sold, or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in DBO, DBS and DGL. Neither DB AG nor PowerShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DBO, DBS, and DGL or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on DBO, DBS and DGL or with making disclosures concerning options on DBO, DBS, and DGL under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[8] ''The Dow 30SM,'' ''Dow Jones,'' ''Dow Jones Industrial Average,'' and ''DJIA,'' are service marks of Dow Jones & Company, Inc. (''Dow Jones'') and have been licensed for use for certain purposes by ProFunds Trust (''ProShares''). All other trademarks and service marks are the property of their respective owners. The Ultra Dow30 ProShares (''DDM'') is not sponsored, endorsed, issued, sold, or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in DDM. Neither Dow Jones nor ProShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DDM or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on DDM or with making disclosures concerning options on DDM under any applicable federal or state laws, rules or regulations. Dow Jones and ProShares do not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

[9] ''Dow Jones U.S. FinancialsSM,'' is a service mark of Dow Jones and has been licensed for use for certain purposes by ProFunds Trust (''ProShares''). All other trademarks and service marks are the property of their respective owners. The Ultra Financials ProShares (''UYG'') is not sponsored, endorsed, issued, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in UYG. Neither Dow Jones nor ProShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on UYG or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on UYG or with making disclosures concerning options on UYG under any applicable federal or state laws, rules or regulations. Dow Jones and ProShares do not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

[10] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2008, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.24 per contract side and $0.15 per contract side, respectively. *See* Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR–ISE–2007–55).

[11] Public Customer Order is defined in ISE Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in ISE Rule 100(a)(38) as a person that is not a broker or dealer in securities.

[12] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

[13] The amount of the execution and comparison fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.16 and $0.03 per contract, respectively.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2008–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–31 and should be submitted on or before May 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8193 Filed 4–16–08; 8:45 am]

BILLING CODE 8010–01–P

[18] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 9, 2008, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57653; File No. SR–NYSEArca–2008–41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 6.87 To Include Procedures for Handling Catastrophic Errors

April 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 6.87 to include procedures for handling Catastrophic Errors. The Exchange also proposes to revise the methodology used for determining the theoretical value of an option, as used in Rule 6.87. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nysearca.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that the purpose of the proposed rule change is to amend NYSE Arca Rule 6.87 to add provisions for price adjustment under certain extreme circumstances. In particular, the Exchange proposes to add criteria for identifying ''Catastrophic Errors,'' and making adjustments when Catastrophic Errors occur, as well as a streamlined procedure for reviewing actions taken in these extreme circumstances. The Exchange is also proposing revisions to Rule 6.87 related to: (i) Determining the theoretical price of an option; and (ii) formatting and making non-substantive changes involving certain language contained in existing rule text.

Catastrophic Error Proposal

The Exchange notes that, currently under Rule 6.87, the Exchange's Obvious Error Rule, trades that result from an Obvious Error may be adjusted or busted according to objective standards. Under the rule, whether an Obvious Error has occurred is determined by comparing the execution price to the theoretical price of the option. The rule generally requires that OTP Holders[5] notify the Exchange within a short time period following the execution of a trade (five minutes for Market Makers and twenty minutes for non-Market Makers) if they believe the trade qualifies as an Obvious Error. Trades that qualify for adjustment are adjusted under the rule to a price that

[5] The Exchange states that ''members'' refers to OTP Holders. For clarity, ''member'' has been replaced with ''OTP Holder'' throughout the filing. Telephone conversation between Glenn H. Gsell, Managing Director, NYSE Regulation, Exchange and Michou H.M. Nguyen, Special Counsel, Division of Trading and Markets, Commission on April 10, 2008.

matches the theoretical price plus or minus an adjustment value, which is $.15 if the theoretical value is under $3 and $.30 if the theoretical value is at or above $3. By adjusting trades above or below the theoretical price, the rule assesses a ''penalty'' in that the adjustment price is not as favorable as what the party making the error would have received had it not made the error.

In formulating the Obvious Error Rule, the Exchange states that it has weighed carefully the need to assure that one market participant is not permitted to receive a wind-fall at the expense of another market participant that made an Obvious Error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. The Exchange states that, while it believes that the Obvious Error Rule strikes the correct balance in most situations, in some extreme situations, trade participants may not be aware of errors that result in very large losses within the time periods required under the rule. In this type of extreme situation, NYSE Arca believes OTP Holders should be given more time to seek relief so that there is a greater opportunity to mitigate very large losses and reduce the corresponding large wind-falls. However, to maintain the appropriate balance, the Exchange believes OTP Holders should only be given more time when the execution price is much further away from the theoretical price than is required for Obvious Errors, and that the adjustment ''penalty'' should be much greater, so that relief is only provided in extreme circumstances.[6]

Accordingly, the Exchange proposes to establish a new paragraph (b) to Rule 6.87 to address ''Catastrophic Errors.'' Under the proposed rule, OTP Holders will have until 8:30 a.m. Eastern Time on the day following the trade to notify the Exchange of a potential Catastrophic Error. For trades that take place in an expiring series on the day of expiration, OTP Holders must notify the Exchange of a potential Catastrophic Error by 5 p.m. Eastern Time that same day. Once an OTP Holder has notified the Exchange of a potential Catastrophic Error, within the required time period, a three-person panel (''Catastrophic Error Review Panel'') would review and make a determination as to the claim. The Catastrophic Error Review Panel (''Panel''), as described in proposed Rule 6.87(b)(3)(C), would be comprised of the NYSE Arca Chief Regulatory Officer (''CRO''), or a designee of the CRO, and a representative from two different OTP Firms. One representative on the Panel would always be from an OTP Firm directly engaged in market making activities, and one representative on the Panel would always be from an OTP Firm directly engaged in the handling of options orders for public customers.[7] The Exchange feels that having a three-person panel, of which the majority is made up of individuals from OTP Holder firms, will help ensure that Catastrophic Error determinations are made by a diverse, representative group in a manner that fosters fairness and impartiality.

The Exchange shall designate at least ten OTP Firm representatives to be called upon to serve on the Panel, as needed. In no case shall a Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate in a Panel on an equally-frequent basis.

In the event the Panel determines that a Catastrophic Error did not occur, the OTP Holder that initiated the review would be charged $5,000 to reimburse the Exchange for the costs associated with reviewing the claim. All determinations by the Catastrophic Error Review Panel would constitute final Exchange action on the matter at issue.

A Catastrophic Error would be deemed to have occurred when the execution price(s) of a transaction(s) is higher or lower than the theoretical price for the option by an amount equal to at least the amount shown in the second column of the chart below (the ''Minimum Amount''), and the adjustment(s) would be made plus or minus the amount(s) shown in column three of the chart below (the ''Adjustment Value''). At all price levels, the Minimum Amount and the Adjustment Value for Catastrophic Errors would be significantly higher than for Obvious Errors, which the Exchange believes, would limit the application of the proposed rule to situations where the losses are very large.

Theoretical price	Minimum amount	Adjustment value
Below $2	$1	$1
2 to 5	2	2
Above 5 to 10 ...	5	3
Above 10 to 50	10	5
Above 50 to 100	20	7
Above 100	30	10

The following example demonstrates how the proposed Catastrophic Error provisions would operate within the Obvious Error framework. Assume an OTP Holder notifies the Exchange within two minutes of a trade where 100 contracts of an option with a theoretical price of $9 were purchased for $17, resulting in an $80,000 error.[8] The trade would qualify as an Obvious Error because the purchase price is more than $.50 above the theoretical price and the OTP Holder notified the Exchange within the required time period. The Exchange would review the trade and either bust it or adjust it to a purchase price of $9.30,[9] which reduces the cost of the error to $3,000.[10] If, however, the OTP Holder failed to identify the same error and notify the Exchange until four hours after the trade, it could not be reviewed under the current Obvious Error Rule. Under the proposal, this trade would qualify as a Catastrophic Error because the purchase price is more than $5 above the theoretical price. Under the proposal, the Panel would review the trade and adjust the purchase price to $12, which reduces the cost of the error to $30,000.[11]

The Exchange believes that the proposed longer time period is appropriate to allow OTP Holders to discover, and seek relief from, trading errors that result in extreme losses. At the same time, the Exchange believes that the proposed Minimum Amounts required for a trade to qualify as a Catastrophic Error, in combination with the large Adjustment Values, assures that only those transactions where the price of the execution results in very high losses will be eligible for adjustment under the new provisions. While the Exchange believes it is important to identify and resolve trading errors quickly, it also believes it is important to the integrity of the marketplace to have the authority to mitigate extreme losses resulting from errors. In this respect, the Exchange

[6] The Exchange does not believe the type of extreme situation that is covered by the proposed rule would occur in the normal course of trading. Rather, this type of situation could potentially occur as a result of, for example, an error in an OTP Holder's quotation system that causes a market maker to severely misprice an option.

[7] The Exchange states that the composition of the Catastrophic Error Review Panel is similar to that of the NYSE Arca Obvious Error Panel, as defined in Rule 6.87(a)(4)(A)(i).

[8] One hundred contracts equal 10,000 shares, and the purchase price is $8 per share above the theoretical price. Therefore, the purchaser paid $80,000 over the theoretical value.

[9] NYSE Arca Rule 6.87(a)(3)(B).

[10] 10,000 shares at $.30 per share over the theoretical value.

[11] 10,000 shares at $3.00 per share over the theoretical value.

believes that the above example illustrates how market participants would continue to be encouraged to identify errors quickly, as losses will be significantly lower if the erroneous trades are busted or adjusted under the Obvious Error provisions of the rule.

In consideration of the extreme nature of situations that will be addressed under the proposed Catastrophic Error provisions, the Exchange proposes a streamlined procedure for making determinations and adjustments. Under the current rule for Obvious Errors, exchange staff makes determinations that can then be appealed to the Obvious Error Appeal Panel (''OE Panel''). For Catastrophic Errors, the Exchange proposes to have a one-step process where the Catastrophic Error Review Panel makes determinations and adjustments. Additionally, given the burden that reviews under the Catastrophic Error provisions of the rule would have on exchange staff and OTP Holder representatives, the Exchange proposes to include a $5,000 fee in the event that the Panel determines that a Catastrophic Error did not occur. The Exchange believes that this is reasonable to encourage OTP Holders and OTP Firms to requests reviews only in appropriate situations, particularly given the objective criteria used to determine whether a Catastrophic Error occurred and the considerable amount of time participants are given under the proposal to assess whether a trade falls within those criteria.

Obvious Error Revisions

Existing Rule 6.87(a)(2)(A)–(B) describes procedures for determining the theoretical value of an option based on the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in that option, or if there are not quotes for comparison purposes, as determined by designated personnel of the Exchange. NYSE Arca now proposes two changes of this rule:

(1) In lieu of using the best bid or offer from a single competing options exchange when determining the theoretical price of an option, the Exchange would now use the last bid price or the last offer price, just prior to the trade, that comprise the National Best Bid/Offer (''NBBO'') [12] as disseminated by the Options Price Reporting Authority (''OPRA''). By using the NBBO prices, the Exchange would be able to more accurately calculate the theoretical price of an option.

(2) In the event that there are no quotes for comparison, the determination of the theoretical price is presently made by designated personnel of the Exchange. The Exchange now proposes that in the event that there are no quotes for comparison, the determination would be made by a designated Trading Official.[13]

The Exchange also proposes to delete existing Commentaries .05 and .06 to Rule 6.87. Commentary .05 refers to Rule 6.87(a)(2)(A) and deals with the competing options exchange with the most liquidity in an option series. This information would no longer be relevant, pursuant to proposed changes to Rule 6.87(a)(2)(A) as part of this filing. Existing Commentary .06 would be deleted and the relevant rule text incorporated into proposed Commentary .02.

The Exchange is also proposing at this time to correct a typographical error in the commentary section of Rule 6.87. Commentaries .07 and .08 [14] incorrectly reference Rule 6.78, instead of Rule 6.87. The Exchange states that this was simply a case of transposed numbers and that the change would have no bearing on the interpretation of the actual rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. In particular, the proposal would allow OTP Holders a longer opportunity to seek relief from errors that result in large losses. Also, adopting the NBBO market for use when determining the theoretical price of an option, assures that any price adjustments made to Obvious or Catastrophic Errors will not violate the terms of the Options Intermarket Linkage Plan.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[20] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Given that the Exchange's proposed catastrophic error relief is substantially the same as that of the International Securities Exchange (''ISE''), previously approved by the Commission,[21] the proposal does not

[12] NYSE Arca notes that the Philadelphia Stock Exchange (''Phlx''), *see* Phlx Rule 1092(b), and the American Stock Exchange (''Amex''), *see* Amex Rule 936–ANTE, use the midpoint of the NBBO to determine the theoretical price of an option.

[13] The Exchange states that a Trading Official, as defined in Rule 6.1(b)(34), is an Exchange employee or officer, who is designated by the Chief Executive Officer or his designee or by the Chief Regulatory Officer or his designee. Exchange employees or officers designated as Trading Officials recommend and enforce rules and regulations relating to trading, decorum, health, safety, and welfare on the Exchange.

[14] Under this proposal, current Commentaries .07 and .08 are being renumbered .05 and .06.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (File No. 4–429) (order approving the Options Intermarket Linkage Plan).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b–4(f)(6)(iii).

[21] *See* Securities Exchange Act Release No. 57398 (February 28, 2008), 73 FR 12240 (March 6, 2008) (order approving SR–ISE–2007–112).

appear to present any novel regulatory issues. In addition, waiving the 30-day operative delay ensures that the Exchange's obvious error rule conforms to the Options Intermarket Linkage Plan without delay. Therefore, the Commission designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–41 and should be submitted on or before May 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Nancy M. Morris,

Secretary.

[FR Doc. E8–8276 Filed 4–16–08; 8:45 am]

BILLING CODE 8010–01–P

[22] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–57652; File No. SR–FICC–2007–08]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Order Approving Proposed Rule Change as Amended To Resume Interbank Clearing for the GCF Repo Service

April 11, 2008.

I. Introduction

On July 11, 2007, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2007–08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On August 28, 2007, the Commission published notice of the proposed rule change to solicit comments from interested parties.[2] On January 22, 2008, FICC amended the proposed rule change. On February 12, 2008, the Commission published notice of the amended proposed rule change to solicit comments from interested parties.[3] The Commission received no comment letters in response to the proposed rule change as originally filed or as amended. For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 56303 (August 22, 2007), 72 FR 49339.

[3] Securities Exchange Act Release No. 57281 (February 6, 2008), 73 FR 8081.

II. Description

1. Background

The GCF Repo service allows FICC Government Securities Division (''GSD'') dealer members to trade GCF Repos throughout the day with inter-dealer broker netting members (''brokers'') on a blind basis without requiring intraday, trade-for-trade settlement on a delivery-versus-payment (''DVP'') basis. Standardized, generic CUSIP numbers have been established exclusively for GCF Repo processing and are used to specify the acceptable type of underlying Fedwire book-entry eligible collateral, which includes Treasuries, Agencies, and certain mortgage-backed securities.

The GCF Repo service was developed as part of a collaborative effort among FICC's predecessor, the Government Securities Clearing Corporation (''GSCC''), its two clearing banks, The Bank of New York (''BNY'') and The Chase Manhattan Bank, now JP Morgan Chase Bank, National Association (''Chase''), and industry representatives.[4] GSCC introduced the GCF Repo service on an intraclearing bank basis in 1998.[5] Under the intrabank service, dealer members could only engage in GCF Repo transactions with other dealers that cleared at the same clearing bank.

In 1999, GSCC expanded the GCF Repo service to permit dealer members to engage in GCF Repo trading on an interclearing bank basis, which allowed dealers using different clearing banks to enter into GCF Repo transactions on a blind brokered basis.[6] Because dealer members that participated in the GCF Repo service did not, and still do not, all clear at the same clearing bank, expanding the service to an interclearing bank basis necessitated the establishment of a mechanism to permit after-hours movements of securities between the two clearing banks to address the situation where GSCC had an unbalanced net GCF securities positions and unbalanced net cash positions at each clearing bank at the end of each day. (In other words, where

[4] BNY and Chase remain the two clearing banks approved by FICC to provide GCF Repo settlement services. In the future, other banks that FICC in its sole discretion determines meet its requirements may be approved to provide GCF Repo settlement services.

[5] Securities Exchange Act Release No. 40623 (October 30, 1998), 63 FR 59831 (November 5, 1998) (SR–GSCC–98–02).

[6] Securities Exchange Act Release No. 41303 (April 16, 1999), 64 FR 20346 (April 26, 1999) (SR–GSCC–99–01).

at the end of GCF Repo processing each business day, the dealers at one clearing bank would be net funds borrowers while the dealers at the other clearing bank would be net funds lenders). To address this issue, GSCC and its clearing banks established a legal mechanism by which securities would ''move'' across the clearing banks without the use of the securities Fedwire.[7] At the end of the day after the GCF Repo net results were produced, securities were pledged using a tri-party-like mechanism, and the interbank cash component was moved through the cash Fedwire. In the morning, the pledges were unwound with the funds being returned to the net funds lenders and the securities being returned to the net funds borrowers.

However, as use of the service increased, certain payment systems risk issues arose in connection to the interbank funds settlements. In 2003, FICC shifted the service back to an intrabank status to enable it to study the risk issues presented and to devise a satisfactory solution to those issues in order that it could bring the service back to interbank status.[8]

2. Proposal

FICC is now seeking to return the GCF Repo service to an interbank status. FICC will address the risk issues raised by the interbank funds movement by placing a security interest on a dealer's ''net free equity'' (''NFE'') at its clearing bank to collateralize its GCF Repo cash obligation to FICC on an intraday basis and by making changes with respect to the morning ''unwind'' period.[9] No changes are being made with respect to the procedures used for after-hours movement of securities, which procedures were used when the interbank service was first introduced.

Specifically, the interbank funds payment will not move during the GCF Repo morning unwind process. In lieu of making funds payments, each interbank dealer (''Interbank Pledging Member'') at the GCF net funds borrower bank will grant to FICC a security interest in its NFE-Related Collateral in an amount equal to its pro rata share of the total interbank funds debit (''Prorated Interbank Cash Amount'').[10] FICC's lien on this collateral will be pari passu to any lien created by the dealer in favor of the relevant GCF clearing bank.

FICC will in turn grant to the GCF net funds lender bank, which was due to receive funds, a security interest in the NFE-Related Collateral to support the debit in FICC's account at the net funds lender bank. The debit in FICC's account (''Interbank Cash Amount Debit'') is the amount of the funds the lending dealers are due to receive in the morning as a prerequisite to their release of GCF collateral. The clearing banks will agree to manage the collateral value of the NFE-Related Collateral as they do today.

The debit in the FICC account at the GCF net funds lender bank will be satisfied during the end of day GCF settlement process. Specifically, that day's new activity will yield a new interbank funds amount to move at end of day; however, this new interbank funds amount will be netted with the amount that was due in the morning to reduce the interbank funds movement. The NFE security interest will be released when the interbank funds movement is made at end of day.

As described above, FICC will have a security interest in the dealers' NFE-Related Collateral on an intraday basis. In the unlikely event of an intraday GCF Repo participant default, FICC will need to have the NFE-Related Collateral liquidated in order to have use of the proceeds. FICC will enter into an agreement with each of the clearing banks whereby each bank will agree to liquidate the NFE-Related Collateral both for itself as well as on behalf of FICC. FICC and each bank will agree to share pro rata in the liquidation proceeds.

Due to the nature of the various assets that may be part of a particular dealer's NFE-Related Collateral and market conditions, liquidation of the NFE-Related Collateral might take longer than one day, which is GSD's typical collateral liquidation time frame, to be completed. Therefore, FICC will establish standby liquidity facilities or other financing arrangements with each of the clearing banks to be invoked as needed in the event of the default of an interbank pledging member and the subsequent liquidation of its NFE-Related Collateral.

FICC will impose a collateral premium (''GCF Premium Charge'') on the GCF Repo portion of the Clearing Fund deposits of all GCF Repo participants to further protect FICC in the event of an intraday default of a GCF Repo participant. FICC will require GCF Repo participants to submit a quarterly ''snapshot'' of their holdings by asset type to enable FICC Risk Management staff to determine the appropriate Clearing Fund premium. Any GCF Repo participant that does not submit this required information by the deadlines established by FICC will be subject to a fine and an increased GCF Premium Charge.

Because the NFE-Related Collateral is held at the clearing banks and because the clearing banks monitor the activity of their dealer customers, FICC will have the right, using its sole discretion, to cease to act for a member that is a GCF Repo participant in the event that a clearing bank ceases to extend credit to such member.

The proposal results in the need for the following specific GSD rule changes.

1. The new terms referred to above (GCF Premium Charge, Interbank Cash Amount Debit, Interbank Pledging Member, NFE-Related Collateral, and Prorated Interbank Cash Amount) will be added to Rule 1 (Definitions). A new term, ''NFE-Related Account,'' which is referred to in the definition of ''NFE-Related Collateral,'' will also be added.

2. Section 3 (Collateral Allocation) of Rule 20 (Special Provisions for GCF Repo Transactions), which governs the GCF Repo collateral allocation process, will be amended to reflect the new process that will occur on the morning of the unwind (to be referred to as the morning of ''Day 2'' in the Rules).

3. Section 3 of Rule 20 will be further amended to provide for the following:

(a) The granting of the security interest in the NFE-Related Collateral to FICC by the dealers;

(b) The granting of authority for FICC to provide instructions to the clearing banks regarding the NFE-Related Collateral of the dealers;

(c) The granting of the security interest in the NFE-Related Collateral to the clearing banks by FICC; and

(d) FICC's right to enter into agreements with the clearing banks regarding the collateral management of the NFE-Related Collateral, the liquidation of the NFE-Related Collateral, and the standby liquidity facilities or other financing arrangements.

4. Rule 4 (Clearing Fund, Watch List, and Loss Allocation) will be amended to provide for the GCF Premium Charge that will be imposed on GCF Repo participants. Rule 3 (Ongoing Membership Requirements) will be amended to include the quarterly NFE reporting requirement which, if not

[7] Movements of cash did not present the same need because the cash Fedwire is open later than the securities Fedwire.

[8] Securities Exchange Act Release No. 48006 (June 10, 2003), 68 FR 35745 (June 16, 2003) (SR–FICC–2003–04).

[9] NFE is a methodology that clearing banks use to determine whether an account holder, such as a dealer, has sufficient collateral to enter a specific transaction. NFE allows the clearing bank to place a limit on its customer's activity by calculating the value of the account holder's balances at the bank. Account holders have the ability to monitor their NFE balance throughout the day.

[10] ''NFE-Related Collateral'' is the total amount of collateral that a dealer has at its clearing bank.

followed timely by the members, will result in fines and GCF Premium Charge.

5. Rules 21 (Restrictions on Access to Services) and 22 (Insolvency of a Member) will be amended to provide that FICC may in its sole discretion cease to act for a member in the event that the member's clearing bank has ceased to extend credit to the member.

6. The schedule of GCF time frames will be amended to reflect technical changes.

III. The Amendment

The amendment to the proposed rule change addresses the situation where FICC becomes concerned about the volume of interbank GCF Repo activity. For example, such a concern might arise if market events were to cause dealers to turn to the GCF Repo service for funding above normal levels. In order to protect itself and its members, FICC believes it is important to have the discretion to institute risk mitigation and appropriate disincentive measures in order to bring GCF Repo levels down to a level which it believes to be prudent from a risk management perspective.

Specifically, the amendment introduces the term ''GCF Repo Event,'' which will be declared by FICC if either of the following occurs: (1) The GCF interbank funds amount exceeds five times the average interbank funds amount over the previous ninety days for three consecutive days[11] or (2) the GCF interbank funds amount exceeds fifty percent of the amount of GCF Repo collateral pledged for three consecutive days.[12] FICC will review the Repo Event triggering levels on a semi-annual basis to determine whether they remain adequate.[13] FICC will also have the right to declare a GCF Repo Event in any other circumstances where in its sole discretion it is concerned about GCF Repo volumes and believes it is necessary to declare a Repo Event in order to protect itself and its members.[14]

The declaration of a GCF Repo Event will trigger the imposition of risk mitigation and disincentive measures. These measures will be imposed each day during the GCF Repo Event, and they will be imposed on each day's GCF net funds borrowers whose aggregate GCF net short position exceeds a certain threshold.[15]

Specifically, FICC will establish a ''GCF Repo Event Parameter,'' which will be a certain percentage of each dealer's average GCF Repo net short settlement amount during a one-month look-back period. FICC is establishing 140 percent as the maximum percentage for the GCF Repo Event Parameter, and FICC will have the discretion to reduce this percentage during a GCF Repo Event if it believes in its sole discretion that the maximum percentage is not adequately addressing the particular event. Any GCF Repo net short settlement amount that exceeds the GCF Repo Event Parameter will be subject to a ''GCF Repo Event Clearing Fund Premium'' and a ''GCF Repo Event Carry Charge.''

FICC will set 12% as the minimum percentage on which the GCF Repo Event Clearing Fund Premium will be based and 50 basis points as the minimum on which the GCF Repo Event Carry Charge will be based.[16] FICC will have the discretion to increase these amounts during a GCF Repo Event if FICC believes in its sole discretion that the minimums are not adequately addressing the particular GCF Repo Event.

FICC will retain the right to waive imposition of the GCF Repo Event Clearing Fund Premium and the GCF Repo Event Carry Charge if FICC determines, in its sole discretion based on monitoring against the GCF Repo Event Parameters, that these measures are not necessary to protect FICC and its members.

IV. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[17] The Commission believes that FICC's proposed rule change is consistent with this Section because it should facilitate the prompt and accurate clearance and settlement of securities by allowing GCF Repo participants to expand their use of the GCF Repo service to include GCF Repos done with dealers that clear at a different clearing bank. The Commission also believes that FICC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) because FICC has designed the interclearing bank procedures, including the risk monitoring and risk mitigation measures, in such a way that they should help assure the safeguarding of securities and funds which are in the custody or control of FICC or for which FICC is responsible.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.[18]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2007–08), as amended, be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8233 Filed 4–16–08; 8:45 am]

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[11] For example, assume that the average interbank funds amount over the previous ninety days is $11 billion. FICC would declare a GCF Repo Event if the interbank funds amount exceeds $55 billion over three consecutive days.

[12] For example, assume that on Monday the total amount of GCF Repo collateral pledged was $86.8 billion and that the interbank funds amount was $11 billion. The interbank funds amount is 12.7 percent of the daily pledged amount. FICC would declare a GCF Repo Event if the overall pledged amount stayed at $86.6 billion and if the interbank amount exceeded $43.3 billion for three consecutive days.

[13] To change the Repo Event triggering levels, FICC is required to submit a proposed rule change to the Commission.

[14] For example, FICC may determine it is prudent to declare a GCF Repo Event if one of the specified events noted above occurs for less than three consecutive days.

[15] FICC will inform its members about the declaration of a GCF Repo Event by issuing an Important Notice. The Important Notice will, among other things, inform members of the implementation date of the measures. FICC will also inform the Commission about the declaration of the Event. The GCF Repo Event will last until FICC notifies its members that the Event has ended.

[16] For example, assume that FICC has declared a GCF Repo Event, and on the day of implementation of the protective measures, Dealer A's average net short settlement amount is $1 billion. This means that Dealer A's GCF Repo Event Parameter is $1.4 billion. On the day of implementation of the protective measures, Dealer A's net settlement amount is $1.9 billion, so the measures will be applied to $500 million (*i.e.*, $1.9 billion minus $1.4 billion). If the percentage for the GCF Repo Event Collateral Premium is 12 percent and the GCF Repo Event Carry Charge is 50 basis points, Dealer A will pay a GCF Repo Event Clearing Fund Premium of $60 million and a GCF Repo Event Carry Charge of $6,944.44 on the day of implementation. On each succeeding day that the GCF Repo Event remains in effect, FICC will reevaluate Dealer A's net settlement position.

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57658; File No. SR–NASDAQ–2008–030]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Charges for Pre-Trade Risk Management Workstation Add-Ons

April 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by Nasdaq under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to adjust the recently-established member charge for the use of PRM Workstation Add-ons. The text of the proposed rule change is available at *http://www.complinet.com/nasdaq,* the principal offices of the Exchange, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Earlier this year, Nasdaq established the pricing for its new pre-trade risk management (''PRM'') functionality.[5] Included in the new charges was the fee that PRM Module subscribers that are users of the NASDAQ Workstation or WeblinkACT 2.0 would pay for PRM Workstation Add-ons. At the time, it was envisioned that each subscriber would be able to receive at no charge one PRM Workstation per PRM Module and would pay $100 per month for each additional PRM Workstation per PRM Module.

Nasdaq has since determined that this approach is needlessly cumbersome, costly to administer and potentially confusing to the users. Therefore, Nasdaq has decided to make any needed number of PRM Workstation Add-ons available to users at no charge during the months of April through June 2008, and then, starting in July 2008, to begin charging $100 per month for each PRM Workstation Add-on that users request (thus eliminating the one-free-Add-on-per-module feature). Nasdaq believes that the proposed change is minor, and therefore, the PRM Workstation Add-on charges remain reasonable and equitably allocated among members that may choose to use this functionality.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The pre-trade management risk functionality provides members with an optional tool at a reasonable cost. Members are not required to use the NASDAQ PRM or PRM Workstation Add-ons. The optional nature of these services and the intensely competitive environment in which they are being offered ensure that the proposed charges will remain market-competitive.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder, because it establishes or changes a due, fee, or other charge imposed on members by Nasdaq. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2008–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–030. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 57146 (January 14, 2008), 73 FR 3786 (January 22, 2008) (SR–NASDAQ–2008–003).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2008–030 and should be submitted on or before May 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E8–8268 Filed 4–16–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57654; File No. SR–NASDAQ–2008–028]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Options on the Full and Reduced Values of the Nasdaq 100 Index

April 11, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves it on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade options on the full and reduced values of the Nasdaq 100 Index (''Index''). Nasdaq also proposes to list and trade long-term options on full and reduced values of the Index. Options on the Index will be cash-settled and have European-style exercise provisions. The text of the proposed rule change is available on Nasdaq's Web site (*http://www.nasdaq.complinet.com*), at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to list and trade cash-settled, European-style, index options on the full and reduced values of the Nasdaq 100 Index, a stock index calculated and maintained by Nasdaq.[3] Specifically, the Exchange proposes to list options based upon the full value of the Nasdaq 100 Index (''Full-size Nasdaq 100 Index'' or ''NDX'') as well as one-tenth of the value of the Nasdaq 100 Index (''Mini Nasdaq 100 Index'' or ''MNX''). The options on NDX and MNX listed on NASDAQ will be identical to those already listed on multiple exchanges.

Nasdaq is filing the proposed rule change because options on the Nasdaq 100 Index will not otherwise qualify for listing on the NASDAQ Option Market (''NOM'') due to the component weightings of the Nasdaq 100 Index. Specifically, Chapter XIV, section 3(b)(8) of the NOM rules currently requires that no component of a broad-based index account for more than ten percent of the weight of the index.[4] Therefore, like the six other options exchanges that currently trade options on the Nasdaq 100 Index, Nasdaq is seeking approval to list and trade Nasdaq 100 Index options under the conditions and according to the standards set forth below.

Index Design and Composition

The Nasdaq 100 Index, launched in January 1985, represents the largest non-financial domestic and international issues listed on Nasdaq based on market capitalization. The Index reflects companies across major industry groups, including computer hardware and software, telecommunications, retail/wholesale trade, and biotechnology.

The Index is calculated using a modified capitalization-weighted methodology. The value of the Index equals the aggregate value of the Index share weights of each of the component securities multiplied by each security's respective official closing price on Nasdaq, divided by the Divisor. The Divisor serves the purpose of scaling such aggregate value (otherwise in the trillions) to a lower order of magnitude which is more desirable for Index reporting purposes. If trading in an Index security is halted while the market is open, the last Nasdaq traded price for that security is used for all index computations until trading resumes. If trading is halted before the market is open, the previous day's official closing price is used. Additionally, the Index ordinarily is calculated without regard to dividends on component securities. The modified capitalization-weighted methodology is expected to retain, in general, the economic attributes of capitalization weighting, while providing enhanced diversification. To accomplish this, Nasdaq reviews the composition of the Index quarterly and adjusts the weighting of Index components using a proprietary algorithm, if certain pre-established weight distribution requirements are not met.

Nasdaq has certain eligibility requirements for inclusion in the Index.[5] For example, to be eligible for inclusion in the Index, a component security must be exclusively listed on the Nasdaq Global Select or Nasdaq

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A description of the Index is available on Nasdaq's Web site at *http://dynamic.nasdaq.com/dynamic/nasdaq100_activity.stm.*

[4] *See* Securities Exchange Act Release No. 57478 (March 12, 2008); 73 FR 14521 (March 18, 2008).

[5] The initial eligibility criteria and continued eligibility criteria are available on Nasdaq's Web site at *http://dynamic.nasdaq.com/dynamic/nasdaq100_activity.stm.*

Global Market, or dually listed on a national securities exchange prior to January 1, 2004.[6] Only one class of security per issuer is considered for inclusion in the Index.

Additionally, the issuer of a component security cannot be a financial or investment company and cannot currently be involved in bankruptcy proceedings. Criteria for inclusion also require the average daily trading volume of a component security to be at least 200,000 shares on Nasdaq. If a component security is of a foreign issuer, based on its country of incorporation, it must have listed options or be eligible for listed-options trading. In addition, the issuer of a component security must not have entered into any definitive agreement or other arrangement which will likely result in the security no longer being Index eligible. An issuer of a component security also must not have annual financial statements with an audit opinion that is currently withdrawn.

As of December 31, 2007, the following were characteristics of the Index:

- The total capitalization of all components of the Index was $2.35 trillion;
- Regarding component capitalization, (a) the highest capitalization of a component was $333.05 billion (Microsoft Corp.), (b) the lowest capitalization of a component was $2.872 billion (Tellabs, Inc.), (c) the mean capitalization of the components was $23.53 billion, and (d) the median capitalization of the components was $8.71 billion;
- Regarding component price per share, (a) the highest price per share of a component was $691.48 (Google Inc.), (b) the lowest price per share of a component was $3.03 (Sirius Satellite Radio Inc.), (c) the mean price per share of the components was $55.05, and (d) the median price per share of the components was $35.10;
- Regarding component weightings, (a) the highest weighting of a component was 13.75% (Apple Inc.), (b) the lowest weighting of a component was 0.09% (Tellabs, Inc.), (c) the mean weighting of the components was 1.00%, (d) the median weighting of the components was 0.53%, and (e) the total weighting of the top five highest weighted components was 33.93% (Apple Inc., Microsoft Corporation, Google Inc., QUALCOMM Incorporated, and Research in Motion Limited.);
- Regarding component available shares, (a) the most available shares of a component was 8.11 billion shares (Microsoft Corp.), (b) the least available shares of a component was 22.68 million shares (Baidu.com, Inc.), (c) the mean available shares of the components was 577.60 million shares, and (d) the median available shares of the components was 211.69 million shares;
- Regarding the six-month average daily volumes of the components, (a) the highest six-month average daily volume of a component was 65.63 million shares (Microsoft Corp.), (b) the lowest six-month average daily volume of a component was 553,240 shares (Henry Schein, Inc.), (c) the mean six-month average daily volume of the components was 9.10 million shares, (d) the median six-month average daily volume of the components was 3.37 million shares, (e) the average of six-month average daily volumes of the five most heavily traded components was 285.37 million shares (Microsoft Corp., Intel Corp., Sun Microsystems, Inc., Cisco Systems, Inc., and Level 3 Communications, Inc.), and (f) 100% of the components had a six-month average daily volume of at least 50,000; and
- Regarding option eligibility, (a) 99.3% of the components were options eligible, as measured by weighting, and (b) 96.0% of the components were options eligible, as measured by number.

Index Calculation and Index Maintenance

In recent years, the value of the Full-size Nasdaq 100 Index has increased significantly, such that the value of the Index stood at 2084.93, as of December 31, 2007. As a result, the premium for the Full-size Nasdaq 100 Index options also has increased. The Exchange believes that this has caused Full-size Nasdaq 100 Index options to trade at a level that may be uncomfortably high for retail investors. The Exchange believes that listing options on reduced values will attract a greater source of customer business than if the options were based only on the full value of the Index. The Exchange further believes that listing options on reduced values will provide an opportunity for investors to hedge, or speculate on, the market risk associated with the stocks comprising the Index. Additionally, by reducing the values of the Index, investors will be able to use this trading vehicle while extending a smaller outlay of capital. The Exchange believes that this should attract additional investors and, in turn, create a more active and liquid trading environment.[7]

The Full-size Nasdaq 100 Index and the Mini Nasdaq 100 Index levels are calculated continuously, using the last sale price for each component stock in the Index, and are disseminated every 15 seconds throughout the trading day.[8] The Full-size Nasdaq-100 Index level equals the current market value of component stocks multiplied by 125 and then divided by the stocks' market value of the adjusted base period. The adjusted base period market value is determined by multiplying the current market value after adjustments times the previous base period market value and then dividing that result by the current market value before adjustments. To calculate the value of the Mini Nasdaq 100 Index, the full value of the Index is divided by ten. To maintain continuity for the Index's value, the divisor is adjusted periodically to reflect events such as changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings, or other capitalization changes.

The settlement values for purposes of settling both Full-size Nasdaq 100 Index (''Fullsize Settlement Value'') and Mini Nasdaq 100 Index (''Mini Settlement Value'') are calculated based on a volume-weighted average of prices reported in the first five minutes of trading for each of the component securities on the last business day before the expiration date (''Settlement Day'').[9] The Settlement Day is normally the Friday preceding ''Expiration Saturday.'' [10] If a component security in the Index does not trade on Settlement Day, the closing price from the previous trading day will be used to calculate both the Full-size Settlement Value and Mini Settlement Value.[11] Accordingly, trading in options on the Index will

[6] In the case of spin-offs, the operating history of the spin-off will be considered. Additionally, if a component security will otherwise qualify to be in the top 25% of securities included in the Index by market capitalization for the six prior consecutive months, it will be eligible if it had been listed for one year.

[7] Options trading on MNX have generated considerable interest from investors, as measured by its robust trading volume on multiple exchanges.

[8] Full-size Nasdaq 100 Index and Mini Nasdaq 100 Index levels are disseminated through the Nasdaq Index Dissemination Services (''NIDS'') during normal Nasdaq trading hours (9:30 a.m. to 4 p.m. ET). The Index is calculated using Nasdaq prices (not consolidated) during the day and the official closing price for the close. The closing value of the Index may change until 5:15 p.m. ET due to corrections to the NOCP of the component securities. In addition, the Index is published daily on Nasdaq's website and through major quotation vendors such as Reuters and Thomson's ILX.

[9] The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

[10] For any given expiration month, options on the Nasdaq 100 Index will expire on the third Saturday of the month.

[11] Full-size Settlement Values and Mini Settlement Values are disseminated by CBOE.

normally cease on the Thursday preceding an Expiration Saturday. Nasdaq monitors and maintains the Index. Nasdaq is responsible for making all necessary adjustments to the Index to reflect component deletions; share changes; stock splits; stock dividends; stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components; and other corporate actions. Some corporate actions, such as stock splits and stock dividends, require simple changes to the available shares outstanding and the stock prices of the underlying components.

The component securities are evaluated on an annual basis, except under extraordinary circumstances which may result in an interim evaluation, as follows: securities listed on Nasdaq that meet its eligibility criteria are ranked by market value using closing prices as of the end of October and publicly available total shares outstanding as of the end of November. Eligible component securities which are already in the Index and ranked in the top 100 (based on market value) are retained in the Index. Component securities that are ranked from 101 to 125 are also retained, provided that those securities that were ranked in the top 100 eligible securities as of the previous ranking review or was added to the Index subsequent to the previous ranking review. Securities not meeting such criteria are replaced. The replacement securities chosen are those Index-eligible securities not currently in the Index that have the largest market capitalization.

Generally, the list of annual additions and deletions to the Index is publicly announced in early December. Changes to the Index are made effective after the close of trading on the third Friday in December. Moreover, if at any time during the year a component security is determined by Nasdaq to become ineligible for continued inclusion in the Index based on the continued eligibility criteria, that component security will be replaced with the largest market capitalization component not currently in the Index that met the eligibility criteria described earlier.

Nasdaq will monitor the Index on a quarterly basis and file a proposed rule change with the Commission pursuant to Rule 19b–4 if: (i) The number of securities in the Index drops by one-third or more; (ii) 10% or more of the weight of the Index is represented by component securities having a market value of less than $75 million; (iii) less than 80% of the weight of the Index is represented by component securities that are eligible for options trading pursuant to Chapter IV, Section 3 of the NOM Rules; (iv) 10% or more of the weight of the Index is represented by component securities trading less than 20,000 shares per day; or (v) the largest component security accounts for more than 25% of the weight of the Index or the largest five components in the aggregate account for more than 50% of the weight of the Index.

Nasdaq also will notify the Commission's Division of Trading and Markets if Nasdaq determines to cease maintaining and calculating the Index, or if the Index values are not disseminated every 15 seconds by a widely available source. NASDAQ has represented that, if the Index ceases to be maintained or calculated, or if the Index values are not disseminated every 15 seconds by a widely available source, it will not list any additional series for trading and will limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

Contract Specifications

The proposed contract specifications are identical to the contract specifications of NDX and MNX options that are currently listed on other exchanges. The Index is a broad-based index, as defined in Chapter XIV, section 2(l) of the NOM rules. Options on the Nasdaq 100 Index are European-style and A.M. cash-settled. The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m. ET), as set forth in Chapter VI, section 2 of the NOM rules, will apply to options on the Nasdaq 100 Index. Exchange rules that are applicable to the trading of options on broad-based indexes will apply to both NDX and MNX.[12] Specifically, the trading of NDX and MNX options will be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options.

For NDX, the Exchange proposes to establish aggregate position and exercise limits at 75,000 contracts on the same side of the market. The Full-size Nasdaq Index contracts will be aggregated with Mini Nasdaq 100 Index contracts, where ten Mini Nasdaq 100 Index contracts equal one Full-size Nasdaq 100 Index contract.[13]

Nasdaq will apply broad-based index margin requirements for the purchase and sale of options on the Index. Accordingly, purchases of put or call options with nine months or less until expiration must be paid for in full. Writers of uncovered put or call options will be required to deposit or maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current index level × $100), less any out-of-the-money amount, subject to a minimum of the option proceeds plus 10% of the aggregate contract value for call options and a minimum of the option proceeds plus 10% of the aggregate exercise price amount for put options.

Nasdaq will set strike price intervals at least 2½ points for certain near-the-money series in near-term expiration months when the Full-size Nasdaq 100 Index or Mini Nasdaq 100 Index is at a level below 200, and 5 point strike price intervals for other options series with expirations up to one year, and at least 10 point strike price intervals for longer-term options. The minimum tick size for series trading below $3 is $0.05, and for series trading at or above $3 is $0.10. Based on the current index levels, the Nasdaq plans to set strike price intervals of 5 points and 2½ points for NDX and MNX, respectively.

The Exchange will list options on both the Full-size Nasdaq 100 Index and the Mini Nasdaq 100 Index in the three consecutive near-term expiration months plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations will be listed. The trading of any long-term Nasdaq 100 Index options will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Surveillance and Capacity

Nasdaq represents that it has an adequate surveillance program in place for options traded on the Index and intends to apply those same program procedures that it applies to the Exchange's other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, dated June 20, 1994.[14] The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance

[12] *See* Chapter VI of the NOM Rules.

[13] The position limits proposed by the Exchange for Nasdaq 100 Index options are identical to those established by CBOE and ISE.

[14] A list of the current members and affiliate members of ISG can be found at *http://www.isgportal.com.*

information for potential intermarket trading abuses.

The Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of NDX and MNX. The Exchange has provided the Commission with system capacity information to support its system capacity representations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act [15] in general, and with section 6(b)(5) in particular,[16] in that it will permit the trading of options on the Full-size Nasdaq 100 Index and Mini Nasdaq 100 Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition. To the contrary, Nasdaq notes that it will be the seventh options market to trade options on the Nasdaq 100 Index, further enhancing an already-competitive market.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2008–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–028. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–028 and should be submitted on or before May 8, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[18] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission notes that it has approved the listing and trading of options on the Nasdaq 100 Index on other exchanges.[19] The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of such options on the NOM.

In approving this proposal, the Commission has specifically relied on the following representations made by the Exchange:

1. Nasdaq will notify the Commission's Division of Trading and Markets if Nasdaq determines to cease maintaining and calculating the Index, or if the Index values are not disseminated every 15 seconds by a widely available source. If the Index ceases to be maintained or calculated, or if the Index values are not disseminated every 15 seconds by a widely available source, Nasdaq will not list any additional series for trading and will limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

2. Nasdaq has an adequate surveillance program in place for options traded on the Index and intends to apply those same program procedures that it applies to the Exchange's other index options.

3. Nasdaq has the necessary systems capacity to support new options series that will result from the introduction of NDX and MNX; and Nasdaq has provided the Commission with system capacity information to support its system capacity representations.

The Commission further notes that in approving this proposal, it relied on the Exchange's discussion of how Nasdaq currently calculates the Index. If the manner in which Nasdaq calculates the Index were to change substantially, this approval order might no longer be effective.

In addition, the Commission believes that the position limits for these new options are reasonable and consistent with the Act. The Commission previously has found identical provisions for NDX and MNX options to be consistent with the Act.[20]

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. Because options on the Nasdaq 100 Index already trade on another

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] *See,* 15 U.S.C. 78f(b)(5).

[19] *See, e.g.*, Securities Exchange Act Release No. 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005); Securities Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994).

[20] *See e.g.*, Securities Exchange Act Release No. 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005); Securities Exchange Act Release No. 44156 (April 6, 2001), 66 FR 19261 (April 13, 2001).

exchange, accelerating approval of Nasdaq's proposal should benefit investors by creating, without undue delay, additional competition in the market for these options.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NASDAQ–2008–028), is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Nancy M. Morris,

Secretary.

[FR Doc. E8–8269 Filed 4–16–08; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6192]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Junior Faculty Development Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/EUR–08–06.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: May 30, 2008.

Executive Summary: The Office of Academic Exchange Programs/European Programs Branch of the Bureau of Educational and Cultural Affairs (ECA/A/E) announces an open competition for the Junior Faculty Development Program (JFDP). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to place visiting faculty in the early stages of their careers from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Montenegro, Serbia, Tajikistan, Turkmenistan, and Uzbekistan at U.S. universities for a one academic semester (five months) program. The recipient organization for this program will also support and oversee the activities of the fellows throughout their stay in the United States. In addition, the recipient organization will recruit and select candidates for the JFDP in Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Montenegro, Serbia, Tajikistan, Turkmenistan, and Uzbekistan to begin the program in the United States in January 2009. The total amount of funding requested from ECA may not exceed $1,450,000 and should support a minimum of 70 fully funded participants, three (3) to six (6) per participating country.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The Junior Faculty Development Program (JFDP) will offer full fellowships to university-level instructors in the early stages of their careers with strong potential for leadership in their disciplines to upgrade their knowledge of the subjects they teach and to develop and maintain ongoing contacts between their home and host institutions. Selected through an open, merit-based competition, JFDP Fellows will attend U.S. universities for one academic semester to work with faculty mentors, to audit courses in order to broaden their knowledge in their fields of study, and to acquire understanding of the U.S. educational system. The JFDP will encourage Fellows to develop professional relationships with the U.S. academic community, to forge ties between their U.S. colleagues and colleagues in their home countries, and to share their experiences and knowledge with students and faculty at their home institutions. Throughout their stay in the United States, JFDP Fellows will audit courses, attend conferences and seminars, and teach a course or give lectures whenever possible. The major goal of the program is to provide opportunities for academics from the participating countries to exchange ideas with U.S. academics in their respective fields of teaching, and to increase collaboration and cooperation between universities in the United States and the participating countries. Participation in the JFDP under this award is restricted to university instructors in the humanities and social sciences from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Montenegro, Serbia, Tajikistan, Turkmenistan, and Uzbekistan. Programs must comply with J–1 Visa regulations. Subject to the availability of funds, it is anticipated that this cooperative agreement will begin on or about August 1, 2008. Please refer to the Solicitation Package for further information.

In a cooperative agreement, ECA/A/E is substantially involved in program activities above and beyond routine monitoring. ECA/A/E activities and responsibilities for this program are as follows:

(1) Participating in the design and direction of program activities;

(2) Approval of key personnel;

(3) Approval and input for all program agendas and timelines;

(4) Guidance in execution of all project components;

(5) Arrangement for State Department speakers during workshops;

(6) Assistance with SEVIS-related issues;

(7) Assistance with participant emergencies;

(8) Providing background information related to participants' home countries and cultures;

(9) Liaison with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department;

(10) Participating in selection of evaluation mechanisms.

II. Award Information

Type of Award: Cooperative Agreement. The Bureau's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2008.

Approximate Total Funding: $1,450,000.

Approximate Number of Awards: 1.

Anticipated Award Date: August 1, 2008.

Anticipated Project Completion Date: December 31, 2009.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is the Bureau's intent to renew this agreement for two additional fiscal years before competing it openly again.

[21] 21 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved cooperative agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, the Bureau's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one cooperative agreement, in an amount up to $1,450,000, to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

To request a Solicitation Package, please contact the Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, *Phone:* 202–453–8524; Fax: 202–453–8520; *e-mail: ChavezCC@state.gov.* Please refer to the Funding Opportunity Number ECA/A/E/EUR–08–06 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from *grants.gov.*

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Carolina Chavez and refer to the Funding Opportunity Number ECA/A/E/EUR–08–06 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from *www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. *Please note:* Effective March 14, 2008, all applicants for ECA federal assistance awards must include with their application, a copy of page 5, Part V–A, ''Current Officers, Directors, Trustees, and Key Employees'' of their most recent Internal Revenue Service (IRS) Form 990, ''Return of Organization Exempt From Income Tax.'' If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphasis on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The recipient organization will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, *Telephone:* (202) 203–5029, *Fax:* (202) 453–8640.

Please refer to Solicitation Package **FOR FURTHER INFORMATION.**

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the program's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other evaluation technique plus a description of a methodology to link outcomes to original program objectives. The Bureau expects that the recipient organization will track participants and partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of program objectives, your anticipated outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. The Bureau anticipates awarding one award in the amount of $1,450,000 to support 70 fully funded fellows, three (3) to six (6) per participating country. Applicant organizations are encouraged, through cost sharing and other methods, to provide as many fellowships as possible based on estimated funding. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity.

IV.3e.2. Allowable costs for the program include the following:

(1) Overseas recruitment and selection of candidates;

(2) Participant travel expenses, stipends, accident and sickness insurance, visa fees, professional development costs;

(3) Orientation(s);

(4) Host university fees;

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times

Application Deadline Date: May 30, 2008.

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (e.g., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail); or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission, please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM.''

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, *Ref.:* ECA/A/E/EUR–08–06, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk or CD. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. Embassy(ies) for its (their) review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*).

Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, *Contact Center Phone:* 800–518–4726, *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time, *E-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC, time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Development and Management: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Objectives should be reasonable, feasible, and flexible. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Institutional Capacity and Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. Project Monitoring and Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other evaluation technique plus description of a methodology to link outcomes to original project objectives are recommended.

6. Cost-Effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original award proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) Quarterly program and financial reports which should include record of program activities from that period.

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Organizations awarded cooperative agreements will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. At a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the award or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Carolina Chavez, Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, ECA/A/E/EUR–08–06, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, *Phone:* 202–453–8524; *Fax:* 202–453–8520; *e-mail: chavezcc@state.gov.* All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/EUR–08–06.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 9, 2008.

Goli Ameri,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–8322 Filed 4–16–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Mccall Aviation, Inc. for Commuter Air Carrier Authorization

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2008–4–18), Docket DOT–OST–2007–28657.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding McCall Aviation, Inc., fit, willing, and able, and awarding it commuter air carrier authorization to engage in scheduled passenger air transportation as a commuter air carrier.

DATES: Persons wishing to file objections should do so no later than April 24, 2008.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2007–28657 and addressed to Docket Operations, (M–30, Room W12–140), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ronâle Taylor, Air Carrier Fitness Division (X–56, Room W86–464), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: April 10, 2008.

Michael W. Reynolds,

Acting Assistant Secretary For Aviation and International Affairs.

[FR Doc. E8–8262 Filed 4–16–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2006–28532]

Port Dolphin Energy LLC, Port Dolphin Energy Liquefied Natural Gas Deepwater Port License Application

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; notice of public meeting; request for comments.

SUMMARY: The Maritime Administration (MARAD) and the Coast Guard announce the availability of the Draft Environmental Impact Statement (DEIS) for Port Dolphin Energy LLC, Port Dolphin Energy Liquefied Natural Gas Deepwater Port license application. The application describes a project that would be located approximately 28 miles off the western coast of Florida, and approximately 42 miles from Port Manatee, Manatee County, Florida. Publication of this notice begins a 45 day comment period and provides information on how to participate in the process.

DATES: The public meeting in Palmetto, FL will be held on May 6th, 2008. The public meeting will be held from 5 p.m. to 7 p.m. and will be preceded by an open house from 3 p.m. to 4:30 p.m. The public meeting may end earlier or later than the stated time, depending on the number of persons wishing to speak. Material submitted in response to the request for comments must reach the Docket Management Facility by June 2, 2008.

ADDRESSES: Public Open House and Meeting: The Manatee Convention Center, Conference Center, One Haben Blvd., Palmetto, Florida 3422. (941) 722–3244.

The DEIS, the application, and associated documentation is available for viewing at the Federal Docket Management System Web site: *http://www.regulations.gov* under docket number 28532.

Docket submissions for USCG–2006–28532 should be addressed to: Department of Transportation, Docket Management Facility, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

The Federal Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ray Martin, U.S. Coast Guard, telephone: 202–372–1449, e-mail: *raymond.w.martin@uscg.mil* or Chris Hanan, U.S. Maritime Administration, telephone: 202–366–1900, e-mail: *Christopher.Hanan@dot.gov.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

We invite you to learn about the proposed deepwater port at an informational open house, and to comment at a public meeting on the proposed action and the evaluation contained in the DEIS.

In order to allow everyone a chance to speak at the public meeting, we may limit speaker time, or extend the meeting hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at the public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management System (FDMS). See ''Request for Comments'' for information about FDMS and your rights under the Privacy Act.

All public meeting locations will be wheelchair-accessible. If you plan to attend the open house or public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comments or other relevant information on the DEIS. The public meeting is not the only opportunity you have to comment. In addition to or in place of attending a meeting, you can submit comments to the Federal Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the comment period for the DEIS. We will announce the availability of the Final EIS (FEIS) and once again give you the opportunity to review and comment. If you want that notice sent directly to you please contact representatives at the public meeting or the Coast Guard representative identified in **FOR FURTHER INFORMATION CONTACT**.

Submissions should include:

- Docket number USCG–2006–28532.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronic submission to FDMS, *http://regulations.gov.*
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a

stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the FDMS Web site (*http://regulations.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the FDMS website, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477).

You may view docket submissions at the Docket Management Facility (see **ADDRESSES**), or electronically on the FDMS website.

Background

Information about deepwater ports, the statutes, and regulations governing licensing, and the receipt of the current application for the proposed Port Dolphin liquefied natural gas (LNG) deepwater port appears in the **Federal Register** on June 25, 2007 (72 FR 34741). The Notice of Intent to Prepare an EIS for the proposed action was published in the **Federal Register** in Volume 72 FR 38116, Thursday, July 12, 2007. The DEIS, application materials and associated comments are available on the docket. Information from the ''Summary of the Application'' from previous **Federal Register** notices is included below for your convenience.

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing action of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives available for the licensing decision on the proposed port are: (i) Licensing as proposed, (ii) licensing with conditions (including conditions designed to mitigate environmental, safety and security impacts), and (iii) denying the license, which for purposes of environmental review is the ''no-action'' alternative. Alternates examined under NEPA are more fully discussed in the DEIS. The Coast Guard and MARAD are the lead Federal agencies for the preparation of the EIS. Address any questions about the proposed action or the DEIS to the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.

Summary of the Application

Port Dolphin Energy LLC, proposes to own, construct, and operate a deepwater port, named Port Dolphin, in the Federal waters of the Outer Continental Shelf in the St. Petersburg (PB) blocks: PB545, PB589 and PB590, approximately 28 miles off the west coast of Florida to the southwest of Tampa Bay, in a water depth of approximately 100 feet. Port Dolphin would consist of a permanently moored unloading buoy system with two submersible buoys separated by a distance of approximately three miles. Each unloading buoy would be permanently secured to eight mooring lines, consisting of wire rope, chain, and buoyancy elements, each attached to anchor points on the seabed.

The buoys would be designed to moor specialized type of LNG vessels called Shuttle and Regasification Vessels (SRV) of 145,000 and 217,000 cubic meter capacities. SRV vessels are equipped to vaporize cryogenic LNG cargo to natural gas through an onboard closed loop vaporization system, and to odorize and meter gas for send-out by means of the unloading buoy to conventional subsea pipelines. The SRVs would moor to the unloading buoys which connect through the hull of the vessels to specially designed turrets that would enable the vessels to weathervane or rotate in response to prevailing wind, wave, and current directions. When the vessels are not present, the buoys would be submerged on a special landing pad on the seabed, 60–70 feet below the sea surface.

Each unloading buoy would connect through a 16-inch flexible riser and a 36-inch flowline to a Y intersection and then a 36-inch pipeline approximately 42 miles in length that would connect onshore in Port Manatee, Manatee County, Florida. The pipeline would connect with the Gulfstream Natural Gas System, LLC and Tampa Electric Company (TECO).

The 36-inch gas transmission line will make landfall on Port Manatee property. The onshore portion of the transmission pipeline will proceed in a generally easterly direction for approximately 4 miles to interconnection points with the Gulfstream and TECO pipeline systems.

Only shuttle and regasification vessels (SRVs) will call on Port Dolphin. Offloading should require between 4–8 days and when empty the SRV would disconnect from the buoy and leave the port.

Initially it is expected that Port Dolphin would be capable of a natural gas throughput of 400 mmscfd and would eventually be capable of 800 mmscfd with a peak capacity of 1200 mmscfd by having at least one SRV regasifying and discharging at all times. The system would be designed so that two SRVs can be moored simultaneously for continuous unloading of natural gas.

Concurrent with their application for the deepwater port, the Applicant submitted an application to the Federal Energy Regulatory Commission (FERC) for a Certificate of Public Convenience and Necessity (Certificate) under section 7 of the Natural Gas Act (NGA), as amended, to construct and operate a new natural gas pipeline and ancillary facilities in Florida. FERC is the cooperating Federal agency responsible for the review of the onshore portion of the natural gas pipelines and associated aboveground components. The application was assigned FERC Docket Nos. CP07–191 and 192. FERC issued a Notice of Application in the **Federal Register** for the Proposed Onshore Pipeline on May 9, 2007.

After discussions with Florida Department of Natural Resources, the Applicant made changes to their onshore pipeline route. Subsequently, the Applicant filed an amended application with the FERC. On January 28, 2008, the FERC issued a new Notice of Amendment for the Proposed Onshore Pipeline, which was published in the **Federal Register** on February 4, 2008. The amended application was assigned Docket No. CP07–191–001. FERC also opened an additional scoping period to solicit comments on the proposed revisions to the onshore pipeline route.

As required by FERC regulations, FERC will also maintain a docket for the FERC portion of the project. The docket number is CP07–191–001. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3767 or TYY, (202) 502–8659.

In addition, pipelines and structures such as the moorings may require permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act which are administered by the Army Corps of Engineers (USACE).

Port Dolphin will also require permits from the Environmental Protection Agency (EPA) pursuant to the provisions of the Clean Air Act, as amended, and the Clean Water Act, as amended.

The new pipeline will be included in the National Environmental Policy Act (NEPA) review as part of the deepwater port application process. FERC, EPA, and the USACE, among others, are cooperating agencies and will participate in the NEPA process as described in 40 CFR 1501.6; and will

incorporate the EIS into their permitting processes.

Construction of the deepwater port is expected to take approximately 11 months with startup of commercial operations following construction, should a license be issued. The deepwater port would be designed, constructed and operated in accordance with applicable codes and standards.

Privacy Act

The electronic form of all comments received by the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit *http://regulations.gov.*

(Authority: 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: April 11, 2008.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–8343 Filed 4–16–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35129]

SSP Railroad Holding LLC—Acquisition and Operation Exemption—Mittal Steel USA—Railways Inc

SSP Railroad Holding LLC (SSP), a newly formed noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Mittal Steel USA—Railways Inc. (Mittal Railways) and to operate approximately 183 miles of rail lines in and around Sparrows Point, MD.[1] Previously, BIP Acquisition Sub, Inc. obtained Board authority to acquire and operate the subject lines as part of a proposed sale of the Sparrows Point properties; however, that proposed sale of the properties was terminated and the line sale transaction was never consummated.[2]

SSP has certified that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III railroad. SSP states that it intends to consummate the transaction as soon as possible after May 1, 2008.[3]

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by April 24, 2008 (at least 7 days before the exemption may become effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35129, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard A. Allen, Zuckert, Scoutt & Rasenberger L.L.P., 888 Seventeenth Street, NW., Suite 700, Washington, DC 20006.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov*.''

Decided: April 9, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–7962 Filed 4–16–08; 8:45 am]

BILLING CODE 4915–01–P

[1] SSP is a wholly owned subsidiary of Severstal U.S. Holdings, LLC, which in turn is a wholly owned subsidiary of OAO Severstal, a publicly owned Russian steel company. ArcelorMittal USA Inc. (ArcelorMittal USA) is the U.S. subsidiary of ArcelorMittal, an international steel company. ArcelorMittal USA and its subsidiaries, including Mittal Railways, own various properties in the United States, including a steel plant at Sparrows Point and an extensive rail network serving the plant.

SSP states that, pursuant to a 2007 consent decree resulting from an action brought by the U.S. Department of Justice, ArcelorMittal USA has agreed to divest its properties at Sparrows Point, including the rail lines that are the subject of this notice. As provided in the sale agreement, OAO Severstal has agreed to purchase the non-rail properties at Sparrows Point and SSP has agreed to acquire the rail properties, which SSP intends to operate as a common carrier.

[2] *See BIP Acquisition Sub, Inc.—Acquisition and Operation Exemption—Mittal Steel USA—Railways Inc.*, STB Finance Docket No. 35074 (STB served Aug. 24, 2007).

[3] SSP states that its projected annual revenues following the transaction will exceed $5 million. On April 1, 2008, SSP concurrently filed a certification of labor notice compliance and a petition for partial waiver of the 60-day advance labor notice requirements at 49 CFR 1150.32(e). That request is being addressed by the Board in a separate decision. Unless the Board grants the waiver request, the earliest this transaction may be consummated will be May 31, 2008.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–882; STB Docket No. AB–884]

Minnesota Commercial Railway Company—Adverse Discontinuance—In Ramsey County, MN; M T Properties, Inc.—Adverse Abandonment—In Ramsey County, MN

On March 28, 2008, The City of New Brighton, MN (the City), filed an application under 49 U.S.C. 10903, requesting that the Surface Transportation Board (Board) authorize the third-party or adverse abandonment and discontinuance of service over an approximately 0.69-mile line of rail, extending from a junction switch near milepost 10.5 on Minnesota Commercial Railway's (MCRC) main industrial lead track and terminating at the western right-of-way of Interstate Highway 35W (the Line).[1] The Line is owned by M T Properties, Inc. and operated by MCRC. The line traverses United States Postal Service Zip Code 55112, and includes no stations.

The line sought to be abandoned does not contain federally granted rights-of-way. Any documentation in the City's possession will be made available promptly to those requesting it.

The City states that there are no existing or potential railroad customers located on the line. The City also states that the shippers who last used the Line have relocated and continue to be served by MCRC.

In a decision served in these proceedings on January 25, 2008, the City was granted exemptions from certain statutory provisions as well as waivers of certain Board regulations at 49 CFR part 1152 that were not relevant to its adverse abandonment and discontinuance application or that sought information not available to it. Specifically, the City was granted, as pertinent, waivers of and exemptions from the notice requirements at 49 U.S.C. 10903(c), 49 CFR 1152.10–14, 49 CFR 1152.21, 49 CFR 1152.22(a)(5), and 49 CFR 1152.24(e)(1), and waiver of the regulatory requirement that the application be executed and verified by

[1] The line is a stub-ended track and has no mileposts.

an officer of the carrier as described at 49 CFR 1152.22(j).

The interests of affected railroad employees, if there are any employees on the Line, will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment and discontinuance or protests (including the protestant's entire opposition case) by May 12, 2008. The City's reply is due by May 27, 2008.

Any Offer of Financial Assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for public use condition under 49 CFR 1152.28 or trail use/rail banking under 49 CFR 1152.29 will be due no later than May 12, 2008. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27)(i).

Persons opposing the proposed abandonment and/or discontinuance who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment and/or discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

All filings in response to this notice must refer to STB Docket Nos. AB–882 and AB–884 and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) John D. Heffner, 1750 K Street, NW., Suite 350, Washington, DC 20006. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's ''*http://www.stb.dot.gov''* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR part 1152, every document filed with the Board must be served on all parties to these adverse abandonment and discontinuance proceedings. 49 CFR 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Section of Environmental Analysis (SEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment/discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0230 or refer to the full abandonment/discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to SEA at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decision and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: April 14, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–8288 Filed 4–16–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34420 (Sub-No. 1)]

R.J. Corman Railroad Company/Central Kentucky Lines, LLC—Trackage Rights Exemption—CSX Transportation, Inc.

Pursuant to a written supplemental agreement dated January 15, 2008, CSX Transportation, Inc. (CSXT) has agreed to amend an existing written master trackage rights agreement with R.J. Corman Railroad Company/Central Kentucky Lines, LLC (RJCC) and grant additional overhead trackage rights to RJCC extending between CSXT milepost VB 113.81 at Winchester, KY, and CSXT milepost KC 131.0 at Berea, KY, a distance of approximately 35 miles.[1]

The earliest this transaction can be consummated is May 1, 2008, the effective date of the exemption (30 days after the exemption is filed).

The amendment to the existing trackage rights agreement will permit RJCC to haul carloads of sand from Lexington, KY, to Berea, KY, in single line service.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by April 24, 2008 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34420 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Ronald A. Lane, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov*.''

Decided: April 9, 2008.

[1] The original trackage rights were exempted in *CSX Transportation, Inc.—Trackage Rights Exemption—R.J. Corman Railroad Company/Memphis Lines; R.J. Corman Railroad Company/Central Kentucky Lines, LLC—Trackage Rights Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34420 (STB served November 12, 2003).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–8159 Filed 4–16–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Advisory Committee on the Auditing Profession

AGENCY: Office of the Undersecretary for Domestic Finance, Treasury.

ACTION: Notice of meeting.

SUMMARY: The Department of the Treasury's Advisory Committee on the Auditing Profession will convene a meeting on May 5, 2008, in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 1 p.m. Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on Monday, May 5, 2008, at 1 p.m. Eastern Time.

ADDRESSES: The Advisory Committee will convene a meeting in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements with the Advisory Committee by any of the following methods:

Electronic Statements

• Use the Department's Internet submission form (*http://www.treas.gov/offices/domestic-finance/acap/comments*); or

Paper Statements

• Send paper statements in triplicate to Advisory Committee on the Auditing Profession, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treas.gov/offices/domestic-finance/acap/comments*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kristen E. Jaconi, Senior Policy Advisor to the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–6618.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations there under, David G. Nason, Designated Federal Officer of the Advisory Committee, has ordered publication of this notice that the Advisory Committee will convene a meeting on Monday, May 5, 2008, in the Cash Room in the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 1 p.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of Domestic Finance, at (202) 622–4944, by 5 p.m. Eastern Time on May 1, 2008, to inform the Department of the desire to attend the meeting and to provide the information that will be required to facilitate entry into the Main Department Building. The agenda for this meeting consists of consideration of a draft of the Advisory Committee's Final Report.

Dated: April 11, 2008.

Taiya Smith,

Executive Secretary.

[FR Doc. E8–8212 Filed 4–16–08; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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